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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 182.

MINNESOTA STATE LIBRARY.

THE RAILROAD COMMISSION OF LOUISIANA, APPELLANT,

vs.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED SEPTEMBER 28, 1907.

(20,860.)

(20,860.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 457.

THE RAILROAD COMMISSION OF LOUISIANA, APPELLANT,

vs.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 19, 1907.

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

No. 61, Baton Rouge Division.

No. 13473, New Orleans Division.

THE CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY, Appellee,
versus
THE RAILROAD COMMISSION OF LOUISIANA, Appellant.

W. L. Granbery, Denegre & Blair and Victor Leovy, Esquires, for the Cumberland Telephone & Telegraph Company, Appellee.
Hon. Walter Guion, Attorney General of Louisiana, and E. H. M'Caleb, Esquire, for the Railroad Commission of Louisiana, Appellant.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana to the Supreme Court of the United States, returnable within Thirty (30) Days from the Twenty-Sixth (26th) day of August, A. D. 1907, at the City of Washington, District of Columbia.

TRANSCRIPT OF APPEAL.

1 *Bill of Complaint.*

Filed Oct. 19, 1906.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division. In Equity.

No. 61.

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

To the Honorable the Judges of the Circuit Court of the United States in and for the Fifth Judicial Circuit and Eastern District of Louisiana, Sitting at Baton Rouge:

The Cumberland Telephone & Telegraph Company, a corporation organized and existing under the laws of the State of Kentucky, and a citizen and resident of the said state, brings this, its bill of complaint, against the Railroad Commission of Louisiana, a corporation organized and existing under the Constitution and Laws of the State

of Louisiana and a citizen of said state and a resident of this district. And thereupon your orator complains and shows as follows:

I.

That your Orator is, and was at all times hereinafter mentioned, a corporation organized and existing under the laws of the State of Kentucky and a citizen and resident of said State; and is not and never was a citizen or resident of the State of Louisiana.

II.

That the Railroad Commission of Louisiana (hereinafter called the "Commission") is and at all times hereinafter mentioned was, a corporation organized and existing under the Constitution and Laws of the State of Louisiana, and a citizen of said State and not a citizen or resident of any other State, and domiciled in the City of Baton Rouge, State of Louisiana, and an inhabitant and resident of the City of Baton Rouge, within the Baton Rouge Division of the Eastern District of Louisiana; and that said Commission derives any and all authority power and character as such Commission, in respect to the matters hereinafter complained of, from and under Articles 203 to 289, both inclusive, of the Constitution of the State of Louisiana for the year 1898.

III.

That your Orator is, and has been for several years engaged in the business of operating a telephone service for hire for the use of such of the public as may subscribe thereto, in the City of New Or-
2 leans and other cities and towns and villages and elsewhere in the State of Louisiana as well as toll lines of long distance telephone service between said cities, towns, villages and other points in Louisiana.

IV.

That by Article 283 of the Constitution of the State of Louisiana, adopted May 12th, 1898, the aforesaid Railroad Commission was created and the domicile thereof was established, as aforesaid, at said City of Baton Rouge, Louisiana. And by Article 284 of said Constitution, power and authority was vested in said commission, and it was thereby made its duty to adopt, change or make reasonable and just rates, charges and regulations to govern and regulate railroad, steamboat and other watercraft, and sleeping car, freight and passenger tariffs and service, express rates, and telephone and telegraph charges, to correct abuses and to prevent unjust discrimination and extortion in the rates for same on railroad; steamboat or other watercraft, sleeping car, freight and passenger service, telephone and telegraph lines of this State. And said Commission was further charged with other duties relative to the service and accom-odations to be furnished to the public by such companies and was given power to enforce its said rates, charges and regulations by having certain penalties, fixed in said Constitution, inflicted through the courts.

V.

That C. L. de Fuentes, William L. Foster and Overton Cade, all citizens and residents of the State of Louisiana, were duly elected and qualified and are now acting as and composing said Railroad Commission of Louisiana, so created by said Articles of said Constitution and are exercising and claiming the right to exercise the powers and functions conferred or purporting to be conferred by said Constitution upon said Commission.

VI.

Your Orator further avers that prior to August 6th, 1906, and since, and at the present time, your orator had promulgated and had in force and effect a tariff of rates for long distance conversa-
3 tion between points in the State of Louisiana; that said tariff of rates had been promulgated and put into effect by the railroad Commission of Louisiana; that said rates were, and are entirely fair, just and reasonable in so far as the public is or was concerned, as under the same subscribers were, and are, able to use said service at a price which did not and does not afford your Orator a fair, just and reasonable compensation for the services.

VII.

Your Orator further avers that said Commission did, nevertheless, hold a hearing at Baton Rouge, Louisiana, on August 6th, 1906, and although no evidence or proof was introduced before said Commission authorizing or justifying said Commission in any way in making a reduction in said rates, yet said Commission nevertheless, without making an investigation or examination into any facts necessary to reach a determination, and without any effort in that direction, did on August 6th, 1906, make, promulgate and issue its order No. 552 in the procedings entitled "Railroad Commission of Louisiana *vs.* Cumberland Telephone & Telegraph Company" whereby it did (if said order should be carried into effect) greatly reduce the rates now and heretofore in existence as aforesaid. Said order of said Commission is hereto attached and made part hereof, being marked "Exhibit A" for identification; being made a part of this bill of complaint as fully as if specifically set forth herein. By the express terms of said order the former tariff of rates for long distance conversations between points in the State of Louisiana was changed except as therein specified and the rates specified and set forth in said order are made the rates for such conversations between such points; and by the express terms of the said order the same was to become effective on the first day of September 1906.

VIII.

That your Orator, being aggrieved by the said order for all the reasons set forth in this bill, did prepare and file with said Commission a petition for a re-hearing upon said order; the said
4 Commission granted said rehearing; but said Commission thereafter, upon October 10th, 1906, being still without evi-

dence or investigation justifying the same, as aforesaid, re-affirmed said order No. 552 and declared that the same should become effective within ten days from the date of said second order. A copy of said second order is hereto attached and marked "Exhibit B" for identification and made a part of this bill of complaint as fully as if specifically set forth herein.

IX.

Your orator avers that its tariff of rates, as to the service covered by said orders, was, and is, reasonable, just and fair to the public and not in any wise excessive or discriminative and under the same your Orator received for its services only a fair and reasonable return for the services rendered; that under the tariff of rates promulgated and sought to be enforced by said Commission, hereinbefore set out under said Orders, Exhibit A and Exhibit B, your Orator will be required to render the services therein described at an unreasonable unjust and unremunerative rate which will not afford to your orator a reasonable return for the service rendered; and that your orator would thereby be deprived of its property without due process of law. Your orator avers that said proposed tariff is unjust and unreasonable in itself and is not justified by any conditions either concerning the services in question or by the financial or physical condition of your orator's property or affairs.

X.

Your orator avers that the said orders of the Commission above complained of are unjust unfair and unreasonable and unwarranted, as above set forth not only with regard to said tariff taken as a whole, but with regard to each particular rate changed by said tariff; and that the same, as a whole and in detail, as aforesaid, constitutes, for the reasons hereinabove set forth, a taking of Orator's property without due process of law and without compensation being previously made, contrary to and in violation of Section 1 Article 14 of the Amendments of the Constitution of the United States, and of Articles 2 and 167 of the Constitution of Louisiana of the year 1898.

XI.

Your Orator avers that by said Article 285 of said Constitution of Louisiana it is provided, among other things, that if any telephone company or other party in interest be dissatisfied with the decision or fixing of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, said party may file a petition setting forth the cause of objection to such act, rule, rate, classification or order or to either or all of them, in a court of competent jurisdiction at the domicile of the Commission against said Commission as defendant. By Article 286 of said Constitution it is provided that, if any telephone company or other company described shall violate any of the rates, charges, orders or decisions of said Commission, such telephone or other company shall forfeit and pay to the State not less than One Hundred Dollars nor more than Five Hundred

Dollars to be recovered before any Court of competent jurisdiction at the domicile of the Commission or of the company or at the place where the complaint arises, at the option of the Commission; provided that whenever any rate, order charge rule or regulation of the commission is contested in court as provided for in Article 285 of the Constitution, no fine or penalty for disobedience thereto or disregard thereof, shall be incurred until after said contestation shall have been finally decided by the courts and then only for acts subsequently committed; that consequently Orator must either render service under said orders of said Commission at non-compensatory rates or be subjected to innumerable suits for fines and penalties and incur the risk of having imposed upon it so numerous fines and penalties that payment thereof will exceed its capital, unless it can obtain relief from the aforesaid orders of said Commission and said suits for fines and penalties by the institution of this suit and the suspension of the aforesaid orders of said Commission until the contest made in this suit and the rights of Orator as herein
6 claimed, shall have been finally determined, and your Orator avers that it is dissatisfied with said tariff of rates promulgated by said Commission by said orders and desires to, and does by this bill of complaint, avail itself of its constitutional right to contest the same as unreasonable, unfair and unjust.

XII.

Your orator further avers that said tariff of rates promulgated by said Commission and herein complained of, is illegal and void, and is not such a tariff of rates as said Railroad Commission is authorized to make and enforce and your orator is entitled to have the same so declared by this Court and to have an injunction against the defendants restraining and prohibiting them from enforcing same against your orator;

XIII.

That this cause is one of a civil nature, arising under the Constitution and laws of the United States and the matter in dispute herein exceeds Five Thousand Dollars, exclusive of interest and costs.

In consideration whereof, and for as much as your Orator is remediless in the premises under the rules of the common law, and can have adequate relief only in a court of equity where matters of this nature are properly cognizable, to the end, therefore, that the defendant hereinafter named may answer the matters and things hereinbefore set forth as fully and particularly as if the same were herein again repeated and they were thereunto interrogated, and that, after due proceedings had, an injunction may issue by this Court, restraining and enjoining said Railroad Commission of Louisiana, from putting or continuing in force and effect, so far as your orator is concerned the said tariff of rates promulgated on August 6th, 1906, and reaffirmed by order of October 10th, 1906, and designated as order No. 552 and restraining the said Railroad Commission from instituting or authorizing or directing any other to prosecute or institute any suit or suits, action or actions, against

your orator for the recovery of any penalties under and by virtue of any of the provisions of the Constitution of Louisiana herein
7 recited, by reason of the failure of your orator and the officers and agents of your orator, or either of them, to put into effect or charge the rates specified in said Order No. 552; and that said tariff of rates specified in said Order No. 552 may be cancelled and declared to be null and void and of no effect by the decree of this Court, and that your orator may have such further and other relief as this case may require, as well as all costs, may it please your Honors to grant unto your Orator a writ or writs of subpœna to be issued out of and under the seal of this Honorable Court, and directed to said defendant, the Railroad Commission of Louisiana, commanding said defendant to appear in this court at some certain date to be therein named, to answer in the premises, but not under oath (answer under oath being hereby expressly waived) and to abide by and perform such decrees and orders as may be herein rendered; and your orator prays for such other and further orders or relief as may be proper in the premises.

(Signed) THE CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY,
By DENEGRE & BLAIR, AND
VICTOR LEOVY,
Its Solicitors and Counsel.

STATE OF LOUISIANA, *Parish of Orleans:*

Edwin L. Powell, being duly sworn, deposes and says that he is agent for the State of Louisiana for the Cumberland Telephone & Telegraph Company, the complainant in the foregoing bill of complaint, and is authorized on its behalf to make such affidavit; that the President, Vice-President and other general officers of said Company are absent from the Fifth Judicial Circuit and from the
8 State of Louisiana; that affiant has read the foregoing bill of complaint and that all the allegations thereof are true of affiant's own knowledge except as to matters stated in respect to investigation and information of said Commission, as to which upon information and belief he verily believes them to be true.

(Signed) EDWIN L. POWELL.

Sworn to and subscribed before me, at New Orleans, Louisiana, on this, the nineteenth day of October 1906.

(Signed) FELIX J. PUIG,
[SEAL.] *Notary Public.*

9 EXHIBIT A.

Attached to Bill of Complaint.

Railroad Commission of Louisiana.

Order No. 552.

No. 642.

RAILROAD COMMISSION OF LOUISIANA
vs.
CUMBERLAND TELEPHONE & TELEGRAPH COMPANY.

Telephone Toll Rates.

Filed June 18, 1906. Heard August 6, 1906.

Upon numerous complaints being made to the Commission against the charges made by the Cumberland Telephone & Telegraph Company in regard to the rates for long distance conversations between points in the State of Louisiana, the Commission instituted this proceeding, and accordingly a hearing was had at Baton Rouge, Louisiana, on August 6th, 1906.

The Commission has fully investigated the charges made by the said company, and believes they are unnecessarily high and excessive, and at the hearing the company failed to show any good reason why the reductions proposed by the Commission shall not be made.

The Commission finds it necessary however to rearrange the rates proposed by it in the order, and in accordance with its conclusions, and it is hereby

Ordered That the following rates for long distance conversations between points in the State of Louisiana be and are hereby established:

For long distance telephone conversations between stations not over twenty miles apart via the nearest pole line mileage, the measurements shall be made according to such pole line route and the following rates shall be charged:

From 1 to 10 miles, inclusive	10 cents
Over 10 to 15 miles, inclusive	15 cents
Over 15 to 20 miles, inclusive	20 cents

When the distance between any two points exceeds twenty miles, according to the shortest pole line route, the measurements between said Stations shall be made according to the air line distance and the charges for a three minute conversation between such stations shall be:

From 1 to 10 miles	10 cents
Over 10 to 15 miles	15 cents
Over 15 to 40 miles	20 cents
Over 40 to 50 miles	25 cents
Over 50 to 60 miles	30 cents
Over 60 to 70 miles	35 cents
Over 70 to 80 miles	40 cents
Over 80 to 100 miles	45 cents
Over 100 miles	½ cent per mile

10 In computing rates between points in different parishes which do not join each other, the parish site will be used as the basing point, and the rates between all points in such parishes shall be the same as the rate between the two county seats. Each parish shall be called a square, and given a number, for greater convenience in computing rates. The air line distances shall be used in computing such rates.

For distances over 100 miles, the actual shall be charged except that whenever a rate does not end in "Naught" or "five," the nearest figure so ending shall be the correct rate to be charged.

For conversations lasting longer than three minutes, the rate for each additional minute shall not exceed one-third of the rate for three minutes.

Port Eads Line.

On account of the extra hazardous conditions under which the "Port Eads Line" is maintained and operated an exception is made to the rates applying to the Stations "Fort St. Philips" "Neptune" "Quarantine" and "Port Eads or Pilot," and the charges for three minute conversations to these stations will be the rate to New Orleans, added to the rates authorized by this commission to the stations named.

The rate for three minutes conversations on Sunday, and between the hours of 6 P. M. and 6 A. M. daily shall be.

When the day rate is 10 cents, the night rate will be 10 cents.
When the day rate is 15 cents, the night rate will be 15 cents.
When the day rate is 20 cents, the night rate will be 20 cents.
When the day rate is 25 cents, the night rate will be 25 cents.
When the day rate is 30 cents, the night rate will be 20 cents.
When the day rate is 35 cents, the night rate will be 20 cents.
When the day rate is 40 cents, the night rate will be 20 cents.

When the day rate is over 40 cents, the night rate will be ½ of the day rate, and when the figures so computed do not end in "0" or "5" the nearest figure so ending shall be the correct rate.

In computing toll rates between telephone stations in Louisiana, the Official Map of the Railroad Commission of Louisiana shall be used to ascertain the distances.

All rates, orders, rules or regulations in conflict with this order will be cancelled when this order goes into effect.

In order to allow the telephone company amply time to prepare

and file its rate sheets and tariffs with the Commission, this order is made effective September 1, 1906.

C. L. DE FUENTES, *Chairman,*
W. L. FOSTER,
OVERTON CADE,
Commissioners.

By order of the Commision.
Baton Rouge, Louisiana, August 6, 1906.

[SEAL.] W. M. BARROW, *Secretary.*

11 EXHIBIT B.

Attached to Bill of Complaint.

Railroad Commission of Louisiana.

Order No. 565.

No. 642.

RAILROAD COMMISSION OF LOUISIANA
vs.
CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY.

Rehearing on Order No. 552 *Fixing Telephone Toll Rates for the State of Louisiana.*

Heard October 10, 1906.

The Commission having granted a re-hearing in the above entitled case, and having heard the Cumberland Telephone and Telegraph Company at Baton Rouge, Louisiana, on October 10, 1906, finds no cause to change its opinion as to what constitute fair and reasonable rates for telephone toll service as furnished by the said company, between places in the State of Louisiana, and as set forth in its order No. 552, adopted on August 6, 1906, It is now,

Ordered that the rates as adopted and established by the said Order No. 552, adopted August 6, 1906, be and the same are hereby re-affirmed and made effective within ten days from the date of this order.

By order of the commission.
Baton Rouge, Louisiana, October 10, 1906.

[SEAL.] C. L. DE FUENTES, *Chairman.*
W. L. FOSTER,
OVERTON CADE,
Commissioners.

(Signed) W. M. BARROW, *Secretary.*

12 *Subpœna in Chancery Issued to the Railroad Commission of Louisiana, October 19th, 1906.*

UNITED STATES OF AMERICA:

The President of the United States to the Marshal of the Eastern District of Louisiana, Greeting:

You are hereby commanded to summon the Railroad Commission of Louisiana, to appear before the Honorable the Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden on the first Monday of December 1906 then and there to answer a Bill in Chancery, filed against it wherein the Cumberland Telephone & Telegraph Company is Complainant and said Railroad Commission of Louisiana is Defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 19th day of October in the year of our Lord one thousand nine hundred and six and 131st, year of American Independence.

[SEAL.] (Signed) H. J. CARTER, *Clerk.*

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States Circuit Court, in Baton Rouge, Louisiana on or before the first Monday of December 1906 otherwise the bill may be taken *pro confesso.*

(Signed) H. J. CARTER, *Clerk.*

Marshal's Return on Subpœna in Chancery.

Filed October 22, 1906.

Received by U. S. Marshal, New Orleans, La., Oct. 19/06, and on the 20th day of the same month and year I served copy hereof on the Rail Road Commission of Louisiana, by handing same to the Secretary thereof, Mr. W. M. Barrow, in person, at the office of said Co., in Baton Rouge, Louisiana.

(Signed) VICTOR LOISEL,
U. S. Marshal,
By B. F. QUEEN,
Deputy U. S. Marshal.

13 Endorsed: United States Circuit Court, Baton Rouge Division. No. 61. The Cumberland Telephone & Telegraph Company *vs.* The Railroad Commission of Louisiana.

14 *Subpœna in Chancery Issued to the Railroad Commission of Louisiana October 19th,* 1906.

UNITED STATES OF AMERICA:

The President of the United States to the Marshal of the Eastern District of Louisiana, Greeting:

You are hereby commanded to summon the Railroad Commission of Louisiana, to appear before the Honorable the Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden on the first Monday of December 1906 then and there to answer a Bill in Chancery, filed against it wherein the Cumberland Telephone & Telegraph Company is Complainant and said Railroad Commission of Louisiana is Defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 19th day of October in the year of our Lord one thousand nine hundred and six and 131st, year of American Independence.

[SEAL.] (Signed) H. J. CARTER, *Clerk.*

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States Circuit Court, in Baton Rouge, Louisiana on or before the first Monday of December 1906 otherwise the bill may be taken *pro confesso.*

(Signed) H. J. CARTER, *Clerk.*

Marshal's Return on Subpœna in Chancery.

Filed October 29th, 1906.

Received by U. S. Marshal, New Orleans, La., Oct. 19/06, and on October 29th 1906, I served copy hereof on the Railroad Commission of Louisiana, by handing to C. L. De Fuentes, Chairman hereof in person, in New Orleans, La.

(Signed) VICTOR LOISEL,
U. S. Marshal,
By B. F. QUEEN, *D'y.*

Endorsed: United States Circuit Court, Baton Rouge Division. No. 61. The Cumberland Telephone & Telegraph Company *vs.* The Railroad Commission of Louisiana.

15 *Appearance.*

Extract from the Chancery Order Book.

MONDAY, *December* 3, 1906.

No. 61, Baton Rouge Div.

THE CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

Now comes Walter Guion Attorney General of Louisiana and enters his appearance as Solicitor for Defendants herein.

16 *Answer.*

Filed December 21, 1906.

In the Honorable the Circuit Court for the Eastern District of Louisiana, Baton Rouge Division. In Equity.

No. 61.

THE CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

The answer of the Railroad Commission of Louisiana, defendant in the bill of complaint exhibited against it in this Honorable Court by the Cumberland Telephone & Telegraph Company.

This respondent, now and at all times hereafter, reserving unto itself the benefit of any and all exceptions that can or may be taken to said bill of complaint, on account of its many errors, insufficiencies and uncertainties, for answer thereto and to such parts thereof as respondent is advised it is material for it to answer unto, answering says:

First. Respondent admits all and singular the allegations contained in the first, second, third, fourth and fifth paragraphs of said bill of complaint, as well as those contained in that part of the Eleventh paragraph of said bill of complaint in respect to the right of action provided by articles 285 and 286 of the Constitution of the State of Louisiana; but respondent denies all and singular the other allegations made and contained in said Eleventh paragraph of the bill of complaint wherein it is averred by complainants that complainant would, by obeying the orders of respondent, the Railroad Commission of Louisiana, herein complained of, either be compelled to render telephone service at non-compensatory rates or be subjected to innumerable suits for fines and penalties and incur the risk of

having imposed upon it fines and penalties so numerous that payment thereof would exceed complainant's capital unless given and afforded the relief therefrom sought to be obtained by the institution of this suit.

17 Second. Respondent admits that, prior to August 6th, 1906, and since, and at the time of the filing of the bill of complaint, complainant had promulgated and had in force and effect a tariff of rates for long distance conversation between points in the State of Louisiana, and that said tariff of rates which had thus been promulgated and put into effect by complainant was, by complainant, proposed to and adopted by respondent, believing, as respondent did at the time, that said tariff was a just, fair and reasonable one for the service rendered, but respondent denies that said rates were at the time, and avers that they are not now, fair, just and reasonable rates for the public, or in so far as the public is and was concerned; and respondent denies further that, under the same, subscribers were, and are, able to use said service at a price which did not and does not afford complainant a fair, just and reasonable compensation for the service rendered. That so far from this being true, respondent avers that the said tariff of rates afforded to complainant more than a fair, just and reasonable compensation for the service performed and rendered and more than those using said telephone service should be obliged to pay for same.

Third. Respondent admits that it did hold a hearing at Baton Rouge, Louisiana, on the 6th August, 1906, concerning the rates that should be charged by complainant for telephone service given and rendered by it from and to points in the State of Louisiana, and that it did make, promulgate and issue its order No. 552 in the proceedings entitled Railroad Commission of Louisiana *vs.* Cumberland Telephone & Telegraph Company, wherein and whereby respondent did reduce the tariff of rates theretofore charged and in existence in the State of Louisiana for certain telephone service thereafter to be rendered, which order is the same as that of which a copy, marked Exhibit A, is annexed to the bill of complaint, and that by the express terms of said Order the former tariff of rates for long distance conversations between points in the State of Louisiana was changed except as therein specified and the rates therein

18 named and set forth made and ordered to be the rates, thereafter to be charged, for such conversations between such points, and respondent admits further that, by the terms of said order No. 552, the same was to become effective on the 1st day of September, 1906.

Respondent denies, however, all and singular the allegations contained in the seventh paragraph of the bill of complaint that said Order No. 552 was entered and adopted, and the said tariff of rates therein named ordered to be put into effect, without evidence or proof introduced before respondent, authorizing and justifying it in making a reduction in said rates; and respondent denies further the allegation in said seventh paragraph of the bill of complaint that respondent promulgated and issued said order No. 552 without making an investigation or examination into any facts necessary

to reach a determination and without any effort in that direction. That so far from this being true, respondent avers that it only made and entered its said order No. 552, by which a change was made in certain telephone rates theretofore charged by complainant, after a full hearing and patient and diligent investigation and examination of the whole subject.

Fourth. Respondent admits that complainant did prepare and file with respondent a petition for a rehearing on said order No. 552, and that respondent granted said rehearing. Respondent admits further that, thereafter, on the 10th October, 1906, it reaffirmed its said order No. 552 and declared that the same should become effective within ten days from and after that date, and that Exhibit B, annexed to the bill of complaint is a copy of said order. Respondent denies, however, that it reaffirmed its said order without evidence or investigation justifying the same, but that, on the contrary, it only re-affirmed said order after a full, patient and diligent investigation and examination of the matters thus submitted to it.

Fifth. Respondent denies that the tariff of rates, governing the services rendered by complainant of the kind which is covered by respondent's orders, is reasonable, just and fair to the public and not, in any wise, excessive or discriminative, and it denies further that, under the same, complainant received, for its services, only a fair and reasonable return for such service so rendered by it; but on the contrary, respondent avers that the tariff of rates for such services which was in existence previous to the adoption of the tariff set forth in Order No. 552 was and is unreasonable unjust and unfair to the public and excessive and discriminative and that, under the same, complainant received for its services an unfair and unreasonable return for the services rendered by it.

Further answering respondent denies that under the tariff of rates promulgated and sought to be enforced by respondent, as contained and set forth in its orders hereinbefore referred to, copies of which are annexed to the bill of complaint as Exhibits A and B, complainant will be required to render the services therein described at an unreasonable, unjust and unremunerative rate and one which will not afford to it a reasonable return for the service rendered, and that complainant will thereby be deprived of its property without due process of law, but that, on the contrary, the tariff of rates as established by respondent for the services so to be rendered by complainant, if respondent's said orders herein complained of be maintained, will be reasonable, just and remunerative to complainant, and such as will afford to it a reasonable return for the service rendered, and that complainant will not be thereby deprived of its property without due process of law.

Further answering, Respondent denies that said tariff as proposed in and by the orders complained of is unjust and unreasonable in itself, and that the same is not justified by any conditions, either concerning the services in question or by the financial or physical condition of complainant's property or affairs but that, on the contrary, said proposed tariff is just and reasonable in itself, that the

same is justified by the conditions concerning and surrounding
20 ing the services in question, as well as by the financial and physical condition of complainant's property and affairs.

Sixth. Respondent denies that its said orders above complained of are unjust, unfair, unreasonable and unwarranted not only with regard to said tariff, taken as a whole, but with regard to each particular rate changed by said tariff, and Respondent denies further that the same, as a whole and in detail, constitutes, for the reasons set forth in the bill of complaint, a taking of complainant's property without due process of law and without compensation being previously made, contrary to and in violation of Section I of article 14 of the Amendments to the Constitution of the United States, and of Articles 2 and 167 of the Constitution of Louisiana of the year 1898.

Seventh. Respondent denies that said tariff of rates, promulgated by respondent and complained of in the bill of complaint, is illegal and void, and it denies further that it is not such a tariff of rates as respondent is authorized to make and enforce.

Further answering, respondent avers that said tariff is a legal and valid tariff and is such an one as respondent is authorized to make and enforce, and that complainant is not entitled to have the same declared unauthorized, illegal or void by this Court, or to have an injunction against respondent restraining and prohibiting it from enforcing the same against complainant.

Eighth. Respondent admits that this cause is one of a civil nature, but it denies that it is one arising under the Constitution and laws of the United States and that the matter in dispute herein exceeds five thousand dollars, exclusive of interests and costs.

Further answering Respondent avers that the matter in dispute herein does not exceed the sum or value of two thousand dollars exclusive of interest and costs.

21 Wherefore, this defendant having fully answered, confessed, traversed and avoided or denied all the matters in said bill of complaint, material to be answered, according to its best knowledge and belief, humbly prays this Honorable Court to enter its judgment herein that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

And as in duty bound, etc.

(Signed) WALTER GUION,

Attorney General of Louisiana, Solicitor for Defendant.

22 *Replication.*

Filed February 4, 1907.

United States Circuit Court, Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division. In Equity.

No. 61.

THE CUMBERLAND TELEPHONE AND TELEGRAPH CO.
vs.
RAILROAD COMMISSION OF LOUISIANA.

The Replication of the Above-named Plaintiff to the Answer of the Above-named Defendant.

This replicant, saving and reserving to *himself* all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto sayeth that *he* does and will ever maintain and prove *his* said bill to be true, certain, and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law — be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* has already prayed.

(Signed) DENEGRE & BLAIR,
" VICTOR LEOVY,
Solicitors for Plaintiff.

23 *Motion & Order Transferring Cause to New Orleans Division.*

Filed April 17, 1907.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 61.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

On motion of Denegre & Blair and Victor Leovy, counsel for complainant, and on suggesting the annexed consent by counsel for defendant;

It is ordered that this cause be transferred to the New Orleans Division of the Eastern District of Louisiana.

Granted.

(Signed) EUGENE D. SAUNDERS, *Judge.*

April 17/07.

24 *Agreement to Transfer Case to New Orleans Division.*

U. S. Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 61.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

It is hereby agreed between the counsel for complainant and the counsel for respondent that this cause shall be transferred to New Orleans Division and that counsel for either party may apply to the Court by motion for the necessary order for such transfer.

(Signed) DENEGRE & BLAIR,
" VICTOR LEOVY,
Sol'rs for Compl't.
" WALTER GUION,
Att'y General, Solicitor for Defendants.

25 *Motion & Order Allowing Ninety Days' Additional Time to Take Testimony.*

Filed April 17, 1907.

U. S. Circuit Court, Eastern District of Louisiana.

No. 61.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

On motion of Denegre & Blair and Victor Leovy, counsel for complainant, and Walter Guion, Attorney General of Louisiana, counsel for respondent, and on suggesting to the Court that replication was filed herein on February 4th, 1907; and that the ninety days allowed to complainant and respondent for taking testimony will expire on May 5th, 1907.

And on further suggesting to the Court that owing to the nature of the case and of the issues therein, an extension of said period will be necessary to both complainant and respondent;

It is ordered by the court that an additional period of ninety (90) days herein, in addition to the period provided by law, be allowed to complainant and to the respondent to take testimony and offer evidence herein.

(Signed) DENEGRE & BLAIR,
" VICTOR LEOVY,
Sol'rs for Compl't.
" WALTER GUION,
Att'y Gen'r'l, Solicitor for Defendants.

Granted.
(Signed) EUGENE D. SAUNDERS, *Judge.*

26 *Order Associating E. H. McCaleb, Jr., Counsel for Defendant.*

Filed April 29, 1907.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 61.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
versus
THE RAILROAD COMMISSION OF LOUISIANA.

Now comes the defendant, the Railroad Commission of Louisiana, by Walter Guion, its Counsel, and states to the Court, on the hearing herein, that E. H. M'Caleb, Jr., had been associated by said defendant as one of its counsel in this cause, and moves that the proper entry be made thereon. It is ordered that the Clerk of the Court make minute of the same, and that said E. H. M'Caleb, Jr., is so associated of record as of counsel to said defendant in this cause.

April 26th, 1907.
(Signed) WALTER GUION,
Att'y General.

Granted.
(Signed) EUGENE D. SAUNDERS, *Judge.*

April 29, 1907.

27 *Motion & Order Allowing Ninety Days Additional Time to Take Testimony.*

Filed June 25, 1907.

U. S. Circuit Court, Eastern District of Louisiana.

No. 61.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

On motion of Denegre & Blair and Victor Leovy, counsel for complainant, and Walter Guion, Attorney General of Louisiana, and E. H. McCaleb, Jr., counsel for respondent, and on suggestion to the court that the time for the complainant and the respondent to take their testimony herein will expire on August 5th, 1907;

And on further suggestion to the court that owing to the nature of this cause and the issues involved, additional time will be necessary to both complainant and respondent;

It is ordered by the court that an additional period of ninety days extending to and including November 5th, 1907, be allowed to complainant and to the respondent to take testimony and offer evidence herein.

(Signed) DENEGRE & BLAIR,
" VICTOR LEOVY,
Att'ys Complainant.
" E. H. McCALEB, JR.,
Of Counsel for Respondent.

June 25, 1907.
(Signed) EUGENE D. SAUNDERS,
U. S. Judge.

28 *Bill of Complaint.*

Filed July 24, 1907.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 66.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

To the Honorable the Judges of the Circuit Court of the United States in and for the Fifth Judicial Circuit and Eastern District of Louisiana, Sitting at Baton Rouge, in Equity:

The Cumberland Telephone and Telegraph Company, a corporation organized under and pursuant to the laws of the commonwealth

of Kentucky and having its principal office and place of business in the City of Hopkinsville in said State, being a citizen of said state and of no other state, brings this its bill of complaint against the Railroad Commission of Louisiana, a corporation organized and existing under the Constitution and laws of the State of Louisiana and a citizen of said State and a resident of the eastern district of Louisiana. And thereupon your orator complains and shows as follows:

I.

That your orator is and was at all times hereinafter mentioned a corporation organized and existing under the laws of the State of Kentucky, having its principal office and place of business in the City of Hopkinsville in said State and a citizen and resident of said State; and is not and never was a citizen or resident of the State of Louisiana or of any other State.

II.

That the Railroad Commission of Louisiana (hereinafter called the Railroad Commission is, and at all times hereinafter mentioned was a corporation organized and existing under the constitution and laws of the State of Louisiana, and a resident of said State, and not a citizen or resident of any other State, domiciled in the City of Baton Rouge, State of Louisiana and an inhabitant of the City of Baton Rouge within the Baton Rouge Division of the Eastern District of Louisiana; and that said Railroad Commission derives
29 any and all authority, power and character as such commission in respect to matters hereinafter complained of, from and under Articles 203 to 289 both inclusive of the Constitution of the State of Louisiana for the year 1898.

III.

That your orator is and has been for several years engaged in the business of operating a telephone service for hire for the use of such of the public as may subscribe thereto, in the City of New Orleans and other cities, towns, villages and elsewhere in the State of Louisiana; as well as to all lines or long distance telephone service between such cities towns, villages and other points in Louisiana.

IV.

That by Article 283 of the Constitution of the State of Louisiana adopted May 12th 1898, the aforesaid Railroad Commission was created and the domicile thereof was established as aforesaid at said City of Baton Rouge Louisiana. And by Article 284 of said Constitution power and authority was vested in said Commission and it was thereby made its duty to adopt, change and make reasonable and just rates, charges and regulations to govern and regulate railroad steamboat and other watercraft, sleeping-car freight and passenger tariff and service, express rates and telephone and telegraph charges to correct abuses and to prevent unjust discrimination and extortion in the rates for same on railroads, steamboat or other watercraft, sleeping-car, freight and passenger service, telephone and tele-

graph lines of the State of Louisiana. And said Commission was further charged with other duties relative to the service and accom-odations to be furnished to the public by such companies and was given power to enforce its said rates, charges and regulations by having certain penalties fixed in said Constitution inflicted through the courts.

30

V.

That C. L. De Fuentes, Overton Cade and J. M. Meredette all citizens and residents of the State of Louisiana were duly elected and qualified and are now acting as and composing said Railroad Commission of Louisiana, (C. L. De Fuentes being chairman thereof); so created by said Articles of said Constitution and are exercising and claiming the right to exercise the powers and functions conferred and purporting to be conferred by said Constitution upon said Commission.

VI.

That under the system of telephones operated by your Orator, a local exchange is established at each point where there is a sufficient population to justify it, by erecting at a central point or points in the City or town, a switchboard or central telephone apparatus and lines of wire therefrom to various business houses and residences, at the ends of which are attached telephone instruments. Subscribers for a certain stipulated monthly charge are entitled to unlimited telephone service with all other subscribers connected with that exchange; then lines (called toll lines) are built between the different exchanges in such manner that each subscriber can, with the use of his own instrument, be put in communication with and talk to any other subscriber in the entire territory in which your orator conducts its business. For this toll line connection a fee is charged for each three minutes use of the line, the amount being graduated according to the distance and being, generally speaking, one half of one cent per mile for each three minutes conversation and one-third of the initial charge for each one minute of conversation additional.

This business has been built up since the organization of the company to the present time along the most careful lines and with the greatest diligence that has been possible to be given by

31 your orator's officers and these facilities and conveniences are of great service in the social and business relations of your orator's patrons and the desire for further extension and development is as pressing today upon your orator as is has been from the beginning.

VII.

Your orator further shows that your orator has been charging for toll service one half of one cent per mile for three minutes conversation and onethird of the initial charge for each additional one minute of time consumed by the patron, all as aforesaid; and for Sunday and between the hours of six P. M. and six A. M. one half of the regular day rate.

It has been found that this reduced rate for night and Sunday service has been abused by the patrons until it has become necessary that the reduced rate be withdrawn, and a uniform rate established for all hours of the day and night, so that the uniform rate for all time, day and night, for telephone service, over the toll lines shall be one half of one cent per mile for three minutes conversation or less and one third the initial charge for each additional one minute of conversation.

This becomes necessary in order that your orator may earn a reasonable return upon its investment, and in order that fair and reasonable compensation for the service rendered shall be charged, for the following reasons, which are inherent in the telephone business, which differs radically and materially from any other known business;

It order to afford telephone communication between distant points it is necessary that two wires shall be run between the two points from which and to which a conversation can be had during the time that the customer is using the toll line. This pair
32 of wires, together with all of the equipment connected therewith is absolutely at the disposal of the patron and is rented by him for his exclusive use and cannot be used by your orator or anyone else so long as the conversation lasts. As is apparent, the convenience of the customer desiring to use a toll line must be consulted and the lines and distant points must be connected together at the time and for the length of time desired by the patron, and not at the time and for the length of time it may be convenient for your orator and the other patrons must wait until the end of the conversation by the initial patron; so that, it results that at certain times during the night the toll lines of your orator are burdened beyond their capacity in handling toll line messages and at other times the entire equipment is idle yielding no revenue, and the expenses and wages of the employees and operators are going on precisely the same as they are at the time the lines are most in use. It is not possible to change these conditions or reduce the expense.

It has been found from experience that business which should normally be transacted by patrons in the afternoon and before six P. M. is held back by many patrons until six P. M. when the half rate takes effect and then for two hours or more the toll lines are burdened beyond the capacity of your orator to handle them, and beyond the capacity of the facilities owned by your orator and thereafter they remain idle and useless throughout the entire night, except for an occasional emergency call; and at the same time your orator is compelled to keep each of its offices open, its operators on duty, with light and fuel, in order to be able to handle the occasional emergency call throughout the hours of the night and early morning. And instead of the night rates being one half the date rate, it should in fact be more than the day rate, owing to
33 the fact that the messages are few and the expense is greater than in the day. And the business which should be transacted before six P. M. but which is held back, as stated, results in

delay and inconvenience to business which normally should be transacted after six P. M.

The telephone business is of comparatively recent development. It was assumed in the beginning that the telephone business was not essentially different from other businesses, and that generally accepted business methods of other public service corporations would apply equally and alike to the telephone business; but, experience has demonstrated that this was a very grave mistake, and that it is impossible to conduct the telephone business along the lines of other public service corporations. It is true that telephone companies generally throughout the country, including your orator do send telegrams during the night at half rate, but that is for the reason that the telegrams are filed and are sent during the night at such time as suits the convenience of the company, and at such times as the lines are idle and are not being used for any other purpose, and therefore it is reasonable right and proper that the rate to be charged should be less because of the decreased cost of the company of sending these messages. It is also a fact that these messages while they are sent during the night hours, they are not delivered to patrons until business hours the next morning. Whereas with the telephone, it is impossible for the company to send the messages or give the lines to patrons at its convenience, but is subject entirely to the convenience of the patrons, and a message at night over the telephone lines is delivered as promptly and precisely in the same way and manner as they are delivered in the day time. And it is a fact that no telegraph Company offers a reduced rate for sending a telegram at night which is required to be delivered as promptly as they are in the day time.

34 Your orator further states that owing to the fact that messages are withheld in the hours of the afternoon until six P. M. it results in a loss of revenue to your orator in that patrons desiring to send messages at night are unable to get the use of the lines, and do not send messages and it results as hereinbefore stated, that the business of your orator is very seriously interfered with, and the business is loaded beyond the capacity of your orator's facilities during the early hours after six P. M. and on Sunday.

VIII.

Your orator further shows that said night rates are not only objectionable and unreasonable upon the ground that for the reasons hereinabove set forth, they constitute a distinction in rates without a difference in service or expense thereof to warrant the said distinction, but also upon the ground that said rates for said night service are in themselves insufficient and unreasonably low for the service rendered, and do not constitute a fair or reasonable compensation therefor.

Your orator further shows that this has become manifest from the experience of your orator in operating its telephone system as a whole in various states and in operating its telephone system as a whole in the State of Louisiana, the said experience plainly showing (by the small returns under a system under which the day charges

are double said night rates) that if all the service (which is equal in value and expense to that for which said night rates are paid) had been rendered upon similar compensation, your orator would have been unable to earn a fair return on its business; such experience accordingly, plainly demonstrating that the rates charged for said night messages are inadequate and unreasonable.

35 In regard to its experience in operating system as a whole your orator shows that on June 8th 1883 it was duly incorporated under the laws of the State of Kentucky, and that its charter has since been amended from time to time pursuant to the laws of said State. That it was organized for the purpose of engaging in the telephone and telegraph business and that it has continuously since its organization been engaged in such business.

That on June 1st, 1907, it owned and operated 523 telephone exchanges in six different states and of this number 60 are located in the State of Louisiana. These various exchanges are connected with each other by more than 75000 wire miles of toll lines and on June 1st, 1907 the number of telephones in use by the subscribers of your orator amounted to 171,087 and any one or more of these subscribers can, with the aid of the total lines be connected with and converse with any other of the 171,087 subscribers. The capital stock of your orator was from the time of its organization to January 1st, 1898, $1,695,700, and since that time its capital stock has been increased as follows:

May 6th, 1898	1,179,200.
April 3rd, 1899	584,200.
September 30th, 1899	864,550.
May 25th, 1901	1,467,400.
December 16th, 1901	1,871,200.
March 2nd, 1902	1,693,950.
December 23rd, 1902	2,339,050.
February 1st, 1905	1,754,300.
February 1st, 1906	3,362,400.
February 1st, 1907	3,362,400.
Total	$20,174,450.

It has in addition a bonded debt of $1,020,000.

Each share of outstanding stock and each bond represents a like amount of cash paid into the treasury of the company and expended in the development of your orator's business from time to time and it is a fact that each and every dollar of the entire capital stock and bonded indebtedness of the company has been expended in the development of its business, and has not been expended for any other purpose whatsoever.

36 The dividends paid to its stockholders from the organization of the company in 1883 to January 1st, 1898, averaged 5.30% per annum and from January 1st, 1898 to January 1907, the dividends averaged 6.56% per annum, or an average for the entire life of the company of 5.93% per annum. At the present time

the stock is on a dividend basis of 7% and no more; nor has your orator from its earnings, been able to pay a larger dividend to its stockholders.

And in order that the injustice and unfairness of said night rates may be plainly seen as to the State of Louisiana taken separately, your orator refers to its experience as to that State under its entire system of rates, wherein (as elsewhere) the rates for day messages have been double said night rates.

Your orator accordingly shows that it was reorganized in 1898 by consolidating the then Cumberland Telephone and Telegraph Company with the Great Southern Telephone & Telegraph Company, which had for many years been developing the telephone business in the States of Louisiana and Mississippi.

On July 1st, 1898, there was in the entire State of Louisiana not exceeding two thousand, seven hundred and twenty-nine telephones and not exceeding ten exchanges and 150 toll stations; on July 1st, 1907, your orator had developed the business in Louisiana until it had and operated in that State 60 exchanges, 294 toll stations and 30,893 telephones. It had, in addition and operated on April 30, 1907, 1,687.17 poles miles of toll lines, and 18,644.09 miles of wire for toll lines.

And yet your orator shows that in spite of said increase of business, the net receipts in the State of Louisiana have been even
37 smaller in proportion to the capital invested than in the remainder of the territory of the Company, thus demonstrating even more clearly than the result from the general business, *that under the application of said night rates to all messages,* the business would have been entirely unremunerative and that they do not accordingly, afford a fair return for the service rendered.

Your orator attaches a statement of Louisiana business for 1906 marked Exhibit O.

That the expenses for the current year are largely in excess of the year 1906, and the net receipts from both inter-state and intra-state business in the State of Louisiana for the current year will be less, as your orator verily believes and charges, than in the year 1906, for the reason that the price of material and labor is constantly increasing; the extent of the service given its patrons is likewise increasing, and its receipts are not increasing in proportion.

Your orator further states that it is impossible to separate the expense incurred in giving toll line service and giving exchange service, for the reason that the two are so interwoven that they cannot be separated. The same poles carry exchange subscribers' wires and toll line wires; the local managers of the local exchanges care for and supervise the construction and maintenance of toll lines as well as exchange lines; the same operators are engaged in giving connections for toll service and exchange service. The same accounting department in each exchange are engaged in looking after the accounts of both classes of business. The same linemen, troublemen, and other employees are engaged in repairing and caring for both the exchange lines and the toll lines. The rent, light and heat items

are not capable of being separated between the two classes of
38 business and it results that while the receipts from the two classes of business can be accurately separated, the expense of giving the service cannot be separated, nor indeed is it feasible or desirable, either from the standpoint of your orator or its patrons, that the two classes of business should be conducted separately, for the reason that it would result in a very great increase in the expense of maintaining each class of business. And it is a fact that your orator so charges that the only economical manner of conducting the telephone business is a combination of exchange with toll line facilities, and in this way alone can the service to the patrons be rendered at as low a price as is now given, and the one kind of business is just as important to each and every community as the other.

A telephone plant, or property in the very nature of the business, can never be a completed property, to be operated thereafter as such, but it must continually grow, in order to meet the requirements of the public, and in order to satisfy the necessities both of existing patrons and those who may desire to become patrons of your orator. Unlike other properties, each and every time a new subscriber is obtained, new capital must be employed in order to string the wires, connect up his telephone with the switchboard and other telephone apparatus, in order that he may be put into communication with the other subscribers to that exchange. This necessarily results in an increase of the capital account *for* year to year as the business grows and as the public necessities and requirements demand, and it is for these reasons that the capital stock of your orator has been increased from time to time and year to year, as hereinabove set out. It is out of the question to require of patrons of the company an amount sufficient to take care of the current expenses and provide a fund with which to equip new patrons,
but this expense of new patrons must be met by an increase
39 of capital by your orator from year to year as has been done in the year, and in order to obtain that new capital it is necessary that a sufficient return upon the capital already invested be shown in order to induce new capital to come into the business, because there is no means by which new capital can be brought into the business except by the voluntary action of the investing public, and it is a well known fact that the investing public do not come into a business with new money that does not show a fair and reasonable return upon the money already invested.

And your orator further charges that this new capital can only be obtained from time to time by the issuance and sale of new stock for the reason that it is impracticable to raise this new capital by the issuance of bonds, or other liens placed upon the existing properties for the reason that after one issue of bonds or one lien has been placed upon the property, it becomes extremely difficult to obtain a second loan upon a second lien, and it is out of the question to endeavor to obtain a third loan upon a third lien.

And your orator charges that a telephone company cannot succeed in meeting the requirements of the public from time to time

except by the issuance of new stock, year by year, to meet the growth of the business and unless the outstanding issues show a fair and reasonable return upon the money actually invested new capital cannot be induced to come into the business.

Your orator further charges that the receipts from its business in the last eighteen months have not been *satisfactory* and unless the business should show a greater per cent. of profit in the future than it has in the recent past, it would be impossible for your orator to raise additional capital with which to meet the requirements of the public. The cause for this decrease in earnings has been
40 brought about partly by the increased price of materials and labor, and partly by your orator giving more service for the same price than it did formerly. Copper wire, which is one of the largest items incurred by your orator has increased *in the last two years* from about fourteen cents to about twenty-eight cents per pound. Poles have doubled in value *within the same period* of time. Taxes and other expenses have likewise increased without your orator's executive officers having any control or authority to prevent it, and your orator charges that the management of its property has been as economical as has been possible. That the salaries and other expenses within its control have been held down to as low a figure as possible; and notwithstanding these facts, on account of the causes above set out, the per-cent. of expenses to gross receipts has been steadily increasing, so much so that it has caused and is causing your orator's executive officers serious concern for the future of the business as well as the security of the investment already made.

Your orator accordingly shows that, it being impossible as above stated, to separate the cost of toll service from the cost of exchange, it cannot be shown with mathematical certainty what proportion of expense should be borne by the respective services; but your orator annexes hereto a table marked Exhibit 1, from which it will be apparent that the loss of revenue for Louisiana on account of said improper discrimination in favor of night service for the month of May 1907, amounted to $3352.89, on which basis the loss in revenue for an entire year simply on night messages, assuming that the number of messages remained the same, would be $40,233.38
41 and the number of day messages being much greater than the number of night messages, it will thus appear that the loss from the application of said night rate to all messages would have been unremunerative and confiscatory and accordingly (the expense and value of service for such messages being as great as for other messages) the prices now paid therefor are unreasonably low.

Your orator avers that it will, on August 1, 1907, put into effect the abolition of the differential herein complained of in all other states in which it operates being Indiana, Illinois, Kentucky Tennessee and Mississippi, and that it desires, and is entitled to do the same, (and make the additional charges described in this bill) on and from said date in Louisiana, and that the failure to do so on said date and thereafter, will continuously work irreparable injury to

your orator it being an impossibility to recover back from the immense number of its patrons the sums that would be lost by continuance of present conditions.

IX.

Your orator further states that at the time of the entrance of your orator into business in the State of Louisiana, the use of telephones and the advantages and benefits connected therewith were unfamiliar to a great portion of the population and that it was considered necessary at that time and since, to offer various special arrangements, in order to induce subscription to the telephone service; that with these objects in view, provisions were made whereby coupons could be purchased by the public for use in payment for toll service, said coupons being sold at such price as to enable the purchaser by their use to have the benefit of toll line service at a reduced rate. And another and different special arrangement was made and embodied in your orator's tariffs whereby *a special* rate was provided under which persons in a position to subscribe to one exchange, could subscribe to what was known as a double exchange service for a slightly increased rate, such subscriber being allowed to talk free of charge not only with any subscriber to his own exchange, but also with any subscriber to one other exchange.

42

Your orator further says that these arrangements above described have been continuously in force and are still in force; but that the reasons for their existence have disappeared and reasons have become apparent why they should be abolished. That, with the growth of the knowledge of the advantage of telephone service, the necessity for offering special inducements of any kind has disappeared; that the existence of such special rates and arrangements confuses and complicates your petitioner's accounting, rendering it difficult not only for your petitioner but for the public to ascertain the reasonableness and propriety of rates and charges; that moreover, since the incorporation of your petitioner and its commencement of business in Louisiana, the Railroad Commission of Louisiana has been created, as aforesaid, and one of the objects of its creation as stated in the articles of the Constitution of Louisiana hereinabove referred to is to secure equality and uniformity, so far as practicable between all persons using telephone service or making use of the services of the other corporations referred to in those articles; that the special inducements and arrangements hereinabove described although heretofore authorized by said Commission and although not in themselves improper, considering the objects for which created, are yet contrary to the spirit of uniformity indicated by said articles of said constitution. That by these special arrangements, persons taking advantage of them, now obtain services as beneficial and as costly as those received, by other persons not in a position to take advantage of such arrangements, and that at a cost less than that which such other persons are obliged to pay. That these special arrangements

43

above described should, for the reasons hereinabove stated be abolished. Your orator annexes hereto Exhibits 2 and 3 showing the number of exchanges involved and the amounts involved in said proposed changes.

X.

That while the aforesaid, special rates and arrangements should be abolished as leading to confusion and as unwarranted, where no just cause or reason in the extra cost of service or otherwise exists for such differences, it is equally true, and for the same reason, that where specific and separable expenses attend necessary and particular class of service that particular class of service should bear the burden of such special expense. That a class of service causing a distinct considerable and easily separable expense consists of the messages in the sending of which the use of cables laid under the Mississippi River is required. That while your petitioner has cables laid under some similar bodies of water, these cables are few and unimportant, not only in number but in original cost and maintenance, compared with those laid by your petitioner across the Mississippi River; that on account of the width and depth of the Mississippi River, the character of its bottom, the swiftness of its current, and the immense amount of sunken trees and debris of all kinds that continually passes down that river, the construction and maintenance of cables across it are particularly and unusually expensive.

Your petitioner shows that on account of the character size and importance of said river it constitutes a natural line of division, so that, if extra charges should be imposed for messages which must be sent across the Mississippi River, such extra expense will not only be justified by the expense of cables created and maintained
44 for the sole purposes of carrying such messages, but will also constitute a simple and plain division or class, readily separated and easily borne in mind by the public.

That the service on cables now in use by your petitioner across the Mississippi River between points wholly within the State of Louisiana are from the 13 stations named in Exhibit hereto annexed, marked Exhibit 4 (the present and proposed revenues being shown therein) and from Freetown to New Orleans, and Algiers to New Orleans.

Your petitioner further shows that it is furnishing through these cables both long distance and local exchange service; that said cables are not only expensive, but their life is of very short duration, owing to the causes set forth above; that these cables vary in length from 6500 feet to 2800 feet; that their average life and usefulness does not exceed three and one half years; that cables for telephone service are peculiarly susceptible to damage by reason of the fact that the insulation of the wires inside the cable is of paper and that any defect in the lead sheathing protecting the same, destroys the usefulness of the entire cable; that it has never been possible for your Orator to remove a damaged

cable from the river and repair it and that when a cable is damaged, it is, accordingly, a total loss and an entirely new cable must be supplied.

Your Orator further shows that a fair and proper extra rate to charge on messages passing over said cables would be, for toll
45 messages, 10 cents; for direct line exchange subscribers service, except at New Orleans, an addition of $5.00 per month to the standard rate for the service; and for five party line exchange subscribers service, except at New Orleans, $1.00 per month for each subscriber on the line.

Your Orator recognizes the fact that at New Orleans it is serving two portions of one city separated by the river and on account of the volume of business done at New Orleans, your Orator is willing to continue to furnish the exchange service without special charge for cable; your Orator having prepared to obviate in a large measure the necessity for the use of the cables for the local exchange service by the building of an exchange at Algiers, Louisiana, for the purpose of handling all of the local business on the west side of the River in and around Algiers and Gretna, Louisiana.

Your Orator shows that said additional charges would not be more than a fair compensation for the extra cost of the service involved in the use of said cables.

XI.

Your Orator further shows that on December 8th, 1906, it made an application to said Railroad Commission for leave to make said additional charges in connection with cable service; a copy of which application is hereto annexed marked Exhibit 5; that the receipt of said application was acknowledged on December 18th, 1906, by letter, of which copy is annexed hereto marked Exhibit 6; that the application was set for hearing by notices, of which copies are hereto annexed, marked Exhibit- 7 and 8 that the further facts in relation to the necessity for such special charges were furnished to the Railroad Commission by letter of which copy is hereto annexed Marked Exhibit 9; that on March 12, 1907, your Orator applied to said Commission for information as to when a decision would be
46 reached, copy of which application is annexed hereto marked Exhibit 10; and received a reply, hereto annexed marked Exhibit 11; that your petitioner thereupon filed with said Commission letter of March 14th, 1907, of which a copy is annexed hereto marked Exhibit 12; proposing a necessary arrangement or grouping of stations in order to put said cable rates into effect; and on March 16th filed with said Commission the proposed tariffs and rate sheets embodying said changes, together with letter, of which copy is hereto annexed, marked Exhibit 13; that on March 19, 1907, the said Railroad Commission denied the said petition by its Order 633, of which copy is hereto annexed marked Exhibit 14.

XII.

That on May 24th, 1907, your Orator filed with said Railroad Commission a petition for the abolition of special rates for night

service and for the discontinuance of the sale of toll line coupons at a discount from the established rates and for the abolition of the special double exchange service; reasons for said application being as hereinabove set forth; a copy of the petition being hereto annexed marked Exhibit 15.

That your Orator accompanied said petition with a letter of which copy is hereto attached marked Exhibit 16, asking that said application be heard at the meeting on May 29th; and received a reply of which copy is hereto attached, marked Exhibit 17, stating that it would be impossible for the Commission to hear the case at its next session.

That thereafter, having received no further notice from the Commission, your Orator observed in the New Orleans Picayune, a newspaper of general circulation published at New Orleans, of date Monday, June 10th, 1907, a statement of the position of the Commission with regard to applications from your petitioner, of which statement a printed copy is hereto annexed marked Exhibit 18.

47 Your Orator enclosed a copy of said statement to said Commission with a letter, of which copy is hereto attached marked Exhibit 19, and received the reply of which copy is hereto attached, marked Exhibit 20.

XIII.

Your Orator further says that it is shown by said correspondence and said application shown in said previous Article that said Commission taked the position that, during the pendency of the suit by your Orator to prevent a general decrease in its toll line charges, it will not consider the application from your Orator for the change requested in night rates and Sunday messages; and your Orator avers that said correspondence and the fate of said application indicates that said Commission considers the existence of said suit as preventing action by it upon application by your Orator for changes not only in its general rates but in any particular rate.

Now your Orator avers that said suit referred to by said Railroad Commission, being a suit of the Cumberland Telephone & Telegraph Company against the Railroad Commission of Louisiana, No. — on the docket of this honorable court in equity, is a suit by your Orator complaining of an order of said Railroad Commission, proposing to carry out a general reduction of its toll line rates throughout the State of Louisiana; that said suit was authorized and proper under the Constitution of Louisiana wherein it is provided that where any rate, ruling, tariff or schedule of said Commission is complained of by suit in any court of compentent jurisdiction, no penalty shall be inflicted for disobedience thereto until the final determination of said suit and then only for acts sebsequently committed. That the result of such suit under the provisions of said Constitution is that no fines or penalties can be imposed for acts committed during the pendency of said suit in violation of said proposed increase of rates and that if any fine or penalties can be imposed during the pendency of said suit, it can only be for disobedience to the tariff of

48 rates as existing at the time of said proposed increase. That if the position of said Railroad Commission should be main-

tained and your Orator should not be given a remedy through this Honorable Court, your Orator's position will be that during the pendency of said suit it will be deprived of all power to apply to said Railroad Commission for the adjustment of any *position* of the schedule of existing rates however meritorious such application may be.

Your Orator further shows that the suit referred to in said letter of said Commission was as, above stated, a suit to prevent a general and uniform decrease provided by said Commission as to your Orator's entire system of toll rates and charges; that the proposed increase in no manner related to any question of the relation between night rates and day rates or the sale of coupon tickets or making extra charges for cable service; and your Orator submits and avers that it would be and is intolerable that discrepancies and inequalities in the tariff as existing should not be corrected and all redress should be refused because Your Orator is attacking in a legal and proper manner, authorized by the Constitution of Louisiana and by the Constitution of the United States and previous order of said Commission on a different subject.

XIV.

Your Orator avers that its proposed changes of rates are and were reasonable, just and fair to the public and not in any wise excessive or discriminative and under the same your Orator would receive for its services only a fair and reasonable return for the service rendered; that said orders of the said Commission refusing said application are unjust, unfair, unreasonable and unwarranted; not only with regard to each particular change proposed to be made, but with regard to the relation between the classes of rates covered by said application and the rates as a whole; and that the said orders
49 and proceeding of said Commission set forth in the exhibits hereto annexed and hereinbefore referred to, constitute, for the reasons hereinabove set forth, a taking of your Orator's property without due process of law and without compensation being previously made, contrary to and in violation of Section 1, Article 14 of the Amendments to the Constitution of the United States, and of Articles 2 to 167 of the Constitution of Louisiana of the year 1898.

XV.

Your Orator avers that by said Article 285 of said Constitution of Louisiana, it is provided, among other things, that if any telephone company or other party in interest be dissatisfied with the decision or fixing of any rate, classification, rule, charge, order, act *of* regulation adopted by the Commission, said party may file a petition setting forth the cause of objection to such act, rule, rate, classification or order to either or all of them, in a court of competent jurisdiction at the domicile of the Commission against said Commission as defendant. By Article 286 of said Constitution it is provided that, if any telephone company or other company described shall violate any of the rates, charges, orders or decisions of said

Commission, such telephone or other company shall forfeit and pay to the State not less than One Hundred Dollars nor more than Five Hundred Dollars to be recivered before any court of competent jurisdiction at the domicile of the Commission or of the company or at the place where the complaint arises, at the option of the Commission; provided that whenever any rate, order, charge, rule or regulation of the Commission is contested in court, as provided for in Article 285 of the Constitution, no fine or penalty for disobediance thereto or disregard thereof, shall be incurred until after said contestation shall have been finally decided by the courts and then
50 only for acts subsequently committed; that consequently — Orator must either render service under said orders of said Commission at non-compensatory rates or be subjected to innumerable suits for fines and penalties and incur the risk of having imposed upon it so numerous fines and penalties that payment thereof will exceed its capital, unless it can obtain relief from the aforesaid orders of said Commission, and said suits for fines and penalties, by the institution of this suit and the suspension of the aforesaid orders of said Commission until the contest made in this suit and the rights of — Orator as herein claimed, shall have been finally determined, and your Orator avers that it is dissatisfied with said tariff of rates promulgated by said Commission by said orders and desires to, and does by this bill of complaint, avail itself of its constitutional right to contest the same as unreasonable, unfair and unjust.

That this cause is of a civil nature, arising under the Constitution and laws of the United States and the matter in dispute herein exceeds the sum or value of Five Thousand Dollars, exclusive of interest and costs.

XVI.

In consideration whereof, and forasmuch as your Orator is remediless in the premises under the rules of common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable, to the end, therefore, that the defendant hereinafter named may answer the matters and things hereinbefore set forth as fully and particularly as if the same were herein again repeated and they were thereunto interrogated, and that, a provisional or priliminary injunction may issue by this Court, restraining and enjoining said Railroad Commission of Louisiana from in any manner interfering with your Orator in abolishing the half rate for the night or Sunday toll line business, and in abolishing double exchange service and sales of coupons at reduced
51 rates and in making the extra charges for cable service hereinabove set forth, and restraining the said Railroad Commission from instituting or authorizing or directing any other to prosecute or institute any suit or suits, action or actions, against your Orator for the recovery of any fines or penalties, or taking action looking to the assessment of any fines or penalties under and by virtue of any of the provisions of the Constitution of Louisiana herein recited, by reason of your Orator and the officers and agents of your Orator, or either of them, putting into effect or charge the changes herein specified; And your Orator further prays that upon

a final hearing its right to make the changes hereinabove set out be declared and sustained and that the preliminary or provisional injunction hereinbefore prayed for be made perpetual; and that the refusal of said Commission to approve said changes be cancelled and declared to be null and void and of no effect by the decree of this Court, and that your Orator may have suer further and other relief as this case may require, as well as all costs, may it please your Honors to grant unto your Orator a writ or writs of subpœna to be issued out of and under the seal of this Honorable Court, and directed to said defendant, the Railroad Commission of Louisiana, commanding said defendant to appear in this Court at some certain date to be therein named, to answer in the premises, but not under oath (answer under oath being hereby expressly waived) and to abide by and perform such decrees and orders as may be herein rendered; and your Oratos prays for such other and further orders or relief as may be proper in the premises.

(Signed) DENEGRE & BLAIR,
" VICTOR LEOVY,
Counsel for Complainant.

52 STATE OF LOUISIANA, *Parish of Orleans:*

Edwin L. Powell, being duly sworn, deposes and says that he is agent for the State of Louisiana for the Cumberland Telephone & Telegraph Company, the complainant in the foregoing bill of complaint, and is authorized on its behalf to make such affidavit; that the President, Vice President and other general officers of said Company are absent from the Fifth Judicial Circuit and from the State of Louisiana; that affiant has read the foregoing bill of complaint and that all the allegations thereof are true of affiant's own knowledge, except as to the matters of statistics, which are kept by the proper accounting officers of said company, and as to matters concerning the company's business outside of Louisiana, as to which matters, upon information and belief, he verily believes them to be true.

(Signed) E. L. POWELL.

Sworn to and subscribed before me at New Orleans, Louisiana, on this the twenty-third day of July A. D., 1907.

[SEAL.] (Signed) HENRY H. CHAFFE,
Notary Public.

53 *Exhibits Filed with Bill of Complaint, July* 24, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 66.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
versus
RAILROAD COMMISSION OF LOUISIANA.

EXHIBIT O.

Revenues of Cumberland Telephone and Telegraph Company of Louisiana for the Year 1906, *and Total Investment in Louisiana to December* 31*st,* 1906.

Gross Revenue from Rentals		$934,628.31
Revenue from Intra-State tolls	253,987.89	
" " Inter-State tolls	66,906.46	
		320,894.35
Miscellaneous Revenue		8,441.05
Total gross revenue		1,263,963.71
Net revenue		252,667.67
Total Investment in Louisiana to December 31, 1906, expended		5,000,000.00

54 EXHIBIT 1.

Comparative Statement of Louisiana Night Revenue and Revenue for Night Connections Figured on Day Basis for Month of May, '07.

Exchange.	Night connections.	Night minutes.	Night tolls.	Day basis.
Amite City	186	38	$38.40	$56.75
Abbeville	270	273	87.40	142.85
Alexandria	501	828	200.15	376.35
Arcadia	132	70	30.40	41.20
Bunkie	170	58	42.05	63.10
Bastrop	56	49	14.65	19.55
Boyce	87	52	23.50	38.50
Berwick	131	50	27.63	40.08
Bayou Sara	161	104	37.00	78.95
Baton Rouge	860	966	228.20	418.55
Clinton	200	314	59.20	95.80
Covington	379	298	91.30	113.10
Colfax	143	79	38.41	57.56
Coushatta	176	86	41.80	61.95
Cheneyville	91	43	20.70	30.40
Crowley	409	389	126.52	215.82
Delhi	45	12	10.24	13.19
Donaldsonville	620	722	158.60	259.25
Franklin	644	657	180.90	285.45
Gueydan	75	74	20.10	25.70
Homer	54	8	11.30	14.35
Hammond	242	222	58.26	91.16
Houma	299	1142	134.30	223.10
Jackson	107	42	21.20	27.15
Jeanerette	302	200	62.20	87.80
Jennings	338	417	111.74	166.84
Kentwood	86	24	18.20	24.35
Lafayette	495	402	135.80	206.30
Lake Providence	34	5	7.00	8.60
Lake Charles	483	727	218.30	385.65
Lutcher	253	145	54.84	76.54
Minden	124	67	27.40	34.45
Melville	169	86	44.10	72.75
Monroe	434	655	143.79	261.69
Morgan City	459	297	107.74	281.68
Mandeville	88	35	16.95	19.20
Marksville	168	43	32.66	42.48
Napoleonville	211	76	42.85	60.35
Natchitoches	147	187	41.50	73.45
New Iberia	467	361	125.85	183.15
New Orleans	8241	4149	1282.10	2191.90
Opelousas	328	346	96.13	155.73
Patterson	251	282	54.56	84.04
Plaquemine	433	405	111.10	181.10
Ponchatoula	130	115	25.94	36.89
Rayne	191	80	37.46	51.76
Rayville	73	132	21.55	27.95
Ruston	252	179	62.40	94.40
Shreveport	616	798	231.75	437.05
Slidell	132	68	26.31	31.21
St. Joseph	104	20	18.50	20.25
St. Martinsville	123	77	22.55	36.25
Tallulah	116	38	25.05	36.70
Thibodaux	545	515	135.65	190.65
Vidalia	49	6	7.45	8.45
Vinton	49	47	14.40	21.20
Waterproof	58	23	10.65	11.65
Wilson	95	59	21.00	24.60
White Castle	259	160	57.85	86.95
Welsh	171	328	44.90	49.35
	22,512	18,204	$5200.43	$8553.22

55 **EXHIBIT 2.**

Estimated Statement Louisiana Toll Discounts.

Amount of toll coupons redeemed year 1906	$38,249.32
Per cent. this sum bears to gross tolls	11.13
Amount of Intra-State tolls for year 1906	253,987.89
Estimated amount paid for in coupons on above basis (intra-State)	28,268,86
Per cent. of discount to coupons sold in 1906	20.72
Amount of discount	5,857.30

56 **EXHIBIT 3.**

Louisiana Two-Exchange Service Effective as of the Present Date.

Jennings, La.:

	Per year.
Jennings Rice Mill, service to Welsh, La., 10 mile rate $4.00 per month	$48.

Welsh, La.:

Lacassine Irrigation Company service to Jennings, La., 10 miles rate $4. per month	48.
Maryville Canal Company, service to Jennings La., 10 miles, rate $4. per month	48.
Morse Hardware Company, service to Jennings, La., 10 miles rate $4. per month	48.
	$192.

57 **EXHIBIT 4.**

Statement of Connections in Louisiana Transmitted Across the Mississippi River, and Our Present Revenue on These Connections and the Proposed Revenue.

Exchange.	In and out connections.	Present revenue.	Proposed revenue.
Amite City	24	$13.30	$15.90
Baton Rouge	1466	449.10	565.45
Bayou Sara	28	10.55	12.80
Clinton	22	6.70	8.00
Covington	78	33.77	39.80
Hammond	38	11.15	13.80
Jackson	20	6.05	7.20
Kentwood	6	2.10	2.45
Lutcher	437	96.43	129.45
Mandeville	6	2.10	2.50
Ponchatoula	24	7.55	9.50
Slidell	9	2.90	3.55
Wilson	19	4.05	5.75
Totals	2,177	$645.75	$816.15

58 EXHIBIT 5.

DEC. 8TH, 1906.

The Honorable Railroad Commission of Louisiana, Baton Rouge, La.

GENTLEMEN: Your petitioner the Cumberland Telephone & Telegraph Company respectfully represents that it is engaged in the telephone business in the State of Louisiana, furnishing both long distance telephone facilities and local exchange service, that in the conduct of its business it finds it necessary to lay a large number of sub-marine cables, that these cables cross various streams and bodies of water in the State of Louisiana and that they are used principally for carrying its wires across the Mississippi River at the following points.—

Lake Providence, La.
Delta Point, La. to Vicksburg, Miss.
Vidalia, La., to Natchez, Miss.
Baton Rouge, La., to Port Allen, La.
Donaldsonville, La., to Darrowville, La.
Convent, La. to point at or near St. James, La.,
Freetown to New Orleans, La.
Algiers, La., to New Orleans, La.

Your petitioner further shows that it is furnishing through these submarine cables both long distance and local exchange service,—that said cables are not only expensive, but their life is of very short duration, owing to the character of the bottom of the river, the depth and swiftness of same and to the immense amount of sunken trees and debris that is continually passing down the river at or near the bottom.

59 Your petitioner respectfully shows that these cables vary in length from 6,500 feet to 2,800 feet, that the average cost of same is approximately $4,000, and that the average life or usefulness of the cables does not exceed three and a half. (3½) years.

Cables for telephone service are peculiarly susceptible to damage by reason of the fact that the insulation of the wires inside of the cable is of paper, and that any defect in the lead sheath protecting same rendered not only one wire unservable, but destroys the usefulness of the entire cable. On account of the tremendous amount of debris, etc., above referred to, it has never been possible for use to remove a damaged cable from the river and repair it, therefore, when a cable is damaged it is a total loss and an entirely new cable must be supplied.

Your Petitioner respectfully shows that it has earnestly endeavored to avoid placing an extra cable charge for service rendered through these sub-marine cables, but finds that it is no longer possible to furnish the service without said special charge and respectfully requests your Honorable Body to authorize special sub-marine cable charges to apply on all service rendered through sub-marine cables, whether at the above mentioned points or at other points

where cables may be laid hereafter, crossing the Mississippi River as follows:

For toll messages—ten cents (10¢), to be ad-ed to the present three minute rate.

The above rate to apply on all messages going through sub-marine cables crossing the Mississippi River.

For direct line exchange subscribers' service, except at New Orleans, La., add $5.00 per month to the standard rate for the service.

For five party lines exchange subscribers service, except at New Orleans, La., add $1.50 per month for each subscriber on line.

60 At New Orleans, La., your petitioner recognizes the fact that it is serving two portions of, one City, separated by the river, and on account of the volume of business done at New Orleans, is willing to continue furnishing the exchange service without making special sub-marine cable charge, it having prepared to obviate in a large measure the necessity for sub-marine cables for the local exchange service by the building of an exchange in Algiers, La., for the purpose of handling all of the local business on the west side of the river in and around Algiers and Gretna, La.,

Your petitioner respectfully requests that this petition be set for hearing at the next meeting of the Commission, and that upon due consideration an order be issued as herein requested.

Respectfully,

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,

(Signed)
By E. L. POWELL, *Superintendent.*

H. H. Dic. E. L. P.
(Copy.)

61 EXHIBIT 6.

BATON ROUGE, *December* 18, 1906.

H—31.

Mr. E. L. Powell, Sup't Cumb. Tel. & Tel. Co., New Orleans, La.

DEAR SIR: We have received the petition of the Cumberland Telephone & Telegraph Company, under date of December 8th, relative to charging additional for subscribers served through sub-marine cables, and will assign this case for hearing at Baton Rouge at the January session of the Commission, and you will be notified in due time of the date.

Respectfully,
(Signed) W. M. BARROW, *Secretary.*

(Copy.)

62 EXHIBIT 7.

Railroad Commission of Louisiana.

Notice of Hearing.

Notice is hereby given, That the following case has been assigned for hearing by the Railroad Commission of Louisiana, at its office in the Capital in Baton Rouge, at 10:00 o'clock A. M., on Jan. 8, 1907, and all interested parties are expected to be present and present their views to the Commission, or to file them in writing before that date.

No. 726.

CUMBERLAND TEL. & TEL. CO., *ex Parte.*
vs.
—— ——.

In re —— ——.

By order of the Commission.
Baton Rouge, Louisiana, Dec. 21, 1906.
[SEAL.] (Sig.) W. M. BARROW, *Secretary.*

(Copy.)

63 EXHIBIT 8.

BATON ROUGE, *January* 2, 1907.

No. 726.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, *ex Parte.*

Petition for advance in rates for parties served through submarine cables.

Notice is hereby given, that the hearing on the above numbered and entitled case, fixed for January 8, 1907, has been postponed to January 9, 1907, at 10:00 A. M. in the office of the Railroad Commission of Louisiana, at Baton Rouge, and you will be governed accordingly.

By order of the Commission.
[SEAL.] (Signed) W. M. BARROW, *Secretary.*

Mr. E. L. Powell, Sup't Cumb. Tel. & Tel. Co., New Orleans, La.

(Copy.)

64 EXHIBIT 9.

JAN. 8TH, 1907.

The Honorable Railroad Commission of Louisiana, Baton Rouge, La.

GENTLEMEN: With further reference to our request of your Honorable Body to authorize a special charge for telephone service when rendered through sub-marine cables crossing under the Mississippi River, we would respectfully submit for your consideration the following statement of cables laid in Louisiana territory and the present condition of same.

Lake Providence, La., One cable—in good working order at present.

Vicksburg, Miss., One cable, in good working order at present.

Natchez, Miss., Two cables,—both a total loss, and the third cable now ordered.

Baton Rouge, La., Three cables, two lost, one recently laid working.

Donaldsonville, La., Two cables,—one a total loss, the other still working with three-tenths of the wires bad.

Convent, La., one cable, three wires in same working.

New Orleans, La., 24 cables of which all have been a total loss except seven, (7) and of this remainder at present twenty-three per cent (23%) of the wires are at the present writing defective and useless.

Pass a Loutre, La., Two cables, one a total loss, the other laid about ninety, (90) days ago.

This information is respectfully submitted in order that you may understand the tremendous percentage of loss in this equipment, and it is not possible for us to protect these cables in any manner.

Respectfully,

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,

(Signed) By E. L. POWELL, *Dist. Sup't.*

H. H. Dic. E. L. P.

(Copy.)

65 EXHIBIT 10.

MARCH 12TH, 1907.

The Honorable Railroad Commission of Louisiana, Mr. W. M. Barrow, Secretary, Baton Rouge, La.

DEAR SIR: We respectfully call attention to the fact that we have not yet received notice of the decision of the Commission in regard to our application for a sub-marine cable charge. We would like very much to dispose of this case. I will have with me and present to

the Commission next Monday the new tariffs made up to include this proposed change.

Yours truly,

(Signed) E. L. POWELL,
Dist. Sup't.

H. H.—Dic. E. L. P.
(Copy.)

66 EXHIBIT 11.

I—31. BATON ROUGE, *March* 13, 1907.

Mr. E. L. Powell, Supt. C. T. & T. Co., New Orleans, La.

DEAR SIR: Replying to your letter 12th instant, beg to say that I am unable to advise when the Commission will render its decision on your application for advances charges for parties served through sub-marine cables. Probably at its next session beginning March 18, 1907.

Respectfully,

(Signed) W. M. BARROW, *Secretary.*

(Copy.)

67 EXHIBIT 12.

Copy.

MARCH 14, 1907.

The Railroad Commission of Louisiana, Hon. C. L. DeFuentes, Chairman, Baton Rouge, La.

DEAR SIR: The Cumberland Telephone & Telegraph Company respectfully petition the Commission to authorize a change in paragraph #2 of their order #488, as contained in the Commission's Seventh Annual Report, to effect that the Parishes of Iberville, Ascension, St. James, St. Charles, Jefferson and St. John be subdivided to the extent that the portions of the Parishes on the East or North-east side of the Mississippi River be given a separate square number from the portions of the Parishes on the South or South-west side of the Mississippi River, square centers to remain the same as under the old arrangement. The stations in Eastern portion of Iberville Parish will now be square #462 in place of #440. The stations in the Eastern portion of Ascension Parish will now be in square #463 in place of #451. The stations in the Western portion of St. James parish will now be in square number 464 in place of #452. The stations in Eastern portion of St. John Parish will now be in square #465 in place of #453. The stations in Eastern Portion of Jefferson Parish will now be in square #446 in place of #456. The stations in Eastern portion of St. Charles Parish will now be in square #467 in place of #457.

Respectfully submitted,

CUMBERLAND TELEPHONE & TELEGRAPH CO.,

By —— ——.

68 EXHIBIT 13.

NEW ORLEANS, LOUISIANA, *March* 16, 1907.

Hon. Railroad Commission of Louisiana, Baton Rouge, Louisiana.

GENTLEMEN: Your petitioner, the Cumberland Telephone and Telegraph Company, respectfully shows that about 60 days ago it applied to your honorable body for authority to place a special charge on all business done by it by means of sub-marine cables under the Mississippi River, but that no decision has yet been reached and that the matter is now being held in abeyance.

Your petitioner now, further shows that it has prepared the necessary tariffs and rate sheets, including their special cable charge, and filed a full set of same herewith, and requests permission to put same into effect on April 1, 1907.

Respectfully,

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,
By E. L. POWELL, *Superintendent.*

(Copy.)

69 EXHIBIT 14.

Railroad Commission of Louisiana.

Order No. 663.

No. 726.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY, *ex Parte.*

Additional Charges for Telephone Service Rendered Through Submarine Cables.

Heard January 9, 1907.

The Commission having under consideration the record in this case it is

Ordered, That the petition be, and is hereby denied.

By order of the Commission.

Baton Rouge, Louisiana, March 19, 1907.

[SEAL.]

OVERTON CADE,
J. J. MEREDITH,
Commissioners.

(Sig.) W. M. BARROW, *Secretary.*

70 EXHIBIT 15.

To the Honorable the Railroad Commission of the State of Louisiana:

Your petitioner the Cumberland Telephone & Telegraph Company, respectfully represents and states that it desires permission from your Honorable Body to abolish the half rate for toll line telephone service in the State of Louisiana, which at present covers night service from six in the evening until six in the morning and all of Sunday.

It has become apparent that a large part of the friction between the company and its patrons results from a congestion of the toll business from six in the evening until about nine at night, for the reason that the business which should properly be handled between three and six in the evening is held back until the half rate takes effect, and then the lines are so burdened that it not only results in delay to the patrons but results in many mistakes, and is a serious menace to the properly and orderly handling of the business. It also results in inconveniencing and delaying patrons of the company in handling the regular business which should properly be handled between six and nine at night.

The expense of maintaining the business after nine o'clock at night is out of all proportion to the receipts, for the reason that the company is required to keep the offices open, using light and fuel, and always having on duty long distance operators to handle merely emergency calls that are put in after nine o'clock at night, and in justice to the Company the rates for that class of service be double what they ordinarily are, but by abolishing the half rate at nights and Sundays, it is believed by the management that the business can be properly handled at the usual day rate.

Your attention is called to the fact that the expense of conducting the telephone business generally has enormously increased, and the service rendered by the company has largely increased in the last two or three years.—The result is that the margin of profit is gradually diminishing and the question of providing new facilities has become a most serious one with the management.—Indeed it is doubtful whether the Company can to-day secure capital to
71 take care of the normal increase in the business without a general raise in all rates:—

The management believes that the abolition of the half rate at night will somewhat increase the receipts without a corresponding increase in expense, and will inevitably result in a much more satisfactory service to the public, in that it will result in an even distribution of the business throughout the twenty-four hours of each day and enable the employés of the company to properly handle the business.

This application is made with a view of abolishing these night rates over the entire system and is not intended to apply alone to the State of Louisiana.

We also find it necessary to discontinue the sale of toll line coupons at a discount from the established tariff rates, and find that we cannot allow any discount of any kind from said standard tariff rates, and we request permission to withdraw such arrangements at once.

We also find that it is not practicable for us to operate the double exchange service at the rate of forty cents, (40¢), per month per mile, as same must be handled over the toll lines, and thereby causes confusion and interferes considerably with the handling of the regular public business.—We request permission to abolish this rate also.—

Respectfully submitted,—
CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,
By E. L. POWELL, *District Superintendent.*

72 EXHIBIT 16.

MAY 24TH, 1907.

The Honorable Railroad Commission of Louisiana, Mr. W. M. Barrow, Secretary, Baton Rouge, La.

DEAR SIR: Enclosed please find application for certain changes in the rates for toll service.—Will ask that this be heard at the meeting on May 29th, if practicable for you to put it, on the docket for that date.

Yours truly,
——— ———,
Dist. Sup't.

H. H.—Dic. E. L. P.—Enc.
R. R. C.
Night Service.

73 EXHIBIT 17.

Railroad Commission of Louisiana.

C. L. DeFuentes, Chairman, New Orleans.
Overton Cade, Youngsville.
J. J. Meredith, Baton Rouge.
W. M. Barrow, Secretary.
I—31—

BATON ROUGE, *May* 27, 1907.

Mr. E. L. Powell, Dist. Sup't, Cumberland Tel. & Tel. Co., New Orleans, La.

DEAR SIR: We have your letter of the 24th inst. enclosing application for certain changes in rates for toll service. It will be impossible for the Commission to hear this case at the next session.

Respectfully,
(Sig.) W. M. BARROW, *Secretary.*

BH.
R. R. C.
Rates.—Night service.

74 EXHIBIT 18.

It is not known just what action the Cumberland Company will take to get before the Railroad Commission its petition for an increase in the night rates. From the position that has been taken by the Commissioners it seems that the only way that the Cumberland Company can get this matter up is by withdrawing its present suit against the Commission, which seeks to prevent the reduction to the toll rates throughout the State, that the Commission desires to make. It is doubted in Railroad Commission circles whether the Cumberland Company although very anxious to get its petition up will be willing to take such a step. The Company maintains that it is impossible for them to do business on the rates proposed by the Commission for the toll line service. They maintain that it would mean a confiscation of their property in Louisiana. Holding this opinion, it does not seem probable that the Cumberland Company will take any steps to withdraw the suit now pending in the Federal Court to hold up the action of the Railroad Commission. On the other hand the Commissioners have announced that as long as this suit is pending that the Cumberland Company will not be given a hearing on its petition for permission to increase its night rate to that of its day rate. As the Cumberland Company's petition is in the Federal Court and as the Company has announced its intentions of carrying the case to the United States Supreme Court if necessary, it seems that it will be some time before the question of making the day and night rate the same will be heard before the Commission.

75 EXHIBIT 19.

JUNE 10TH, 1907.

The Honorable Railroad Commission of Louisiana, Mr. W. M. Barrow, Secretary, Baton Rouge, La.

DEAR SIR: Enclosed please find clipping from the Picayune of Monday June 10th, stating that the Commission will not grant this Company a hearing on its petition to abolish the reduced night rates for telephone service in this State.

Kindly advise if the article correctly states the views of the Commission.—As you know my duties require me to do a great deal of traveling, and if the Commission will not hear our application at its next meeting, I will be glad to know it, in order that I may make my engagements accordingly.

Please advise and oblige,—

Yours truly,

——— ———,

Dist. Sup't.

H. H.—Dic. E. L. P.—Enc.

76 EXHIBIT 20.

Railroad Commission of Louisiana.

C. L. De Fuentes, Chairman, New Orleans.
Overton Cade, Youngsville.
J. J. Meredith, Baton Rouge.
W. M. Barrow, Secretary.
I–31—

BATON ROUGE, *June* 11, 1907.

Mr. E. L. Powell, Dist. Sup't Cumberland Tel. & Tel. Co., New Orleans, La.

DEAR SIR: With reference to the petition of the Cumberland Tel. & Tel. Co., which has been filed with the Commission asking to be allowed to advance the night and Sunday rate for toll conversations, I have now to advise you that the Commission has considered this petition and has concluded that it would be useless to take up this petition at this time. The reason for this decision is that your company has filed suit against the Railroad Commission of Louisiana in the Federal Courts to have set aside this order reducing the toll rates in the State of Louisiana, in which order the rates for night and Sunday messages are also established. The entire subject is now in litigation, and the Commission could not consistently enter any orders tending to abrogate fixing its order reducing toll rates in the State of Louisiana, now in litigation. For this reason no hearing will be assigned on the Company's petition for an advance in night and Sunday rates for toll conversations, at this time.

Respectfully,

(Signed) W. M. BARROW, *Secretary.*

BH.

77 *Motion for Injunction & Order to Show Cause.*

Filed July 24, 1907.

In the Circuit Court of the United State- for the Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division. In Equity.

No. 66.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
RAILROAD COMMISSION OF LOUISIANA.

Now comes the complainant in the above entitled suit, the Cumberland Telephone & Telegraph Company, by Denigre & Blair and Victor Leovy, complainant's solicitors, and moves this Honorable Court to grant a writ of injunction against said defendant, its

agents, attorneys, clerks, servants and employees, pending this suit, and until further order of the court, comformable to the prayer of the bill in this case filed.

(Signed) DENEGRE & BLAIR,
" VICTOR LEOVY,
Solicitors for Complainant.

Let the defendant be notified to appear in this court, at chambers, in New Orleans, La. on July 30, 1907, at 11 o'clock A. M. & show cause why the injunction herein prayed for should not issue.

(Signed) EUGENE D. SAUNDERS, *Judge.*

New Orleans, La., July 24, 1907.

78 *Marshal's Return on Motion for Injunction.*

Filed July 26, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 66.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

Received by U. S. Marshal, New Orleans, La., July 24/07 and on July 25/07 I served copy hereof on the Rail Road Commission of Louisiana by handing the same to W. M. Barrow, Secretary of said Commission, in person in the office of said Commission, at Baton Rouge, La., The President of said commission being absent from Baton Rouge, at the time of said service, which fact I learned by interrogating the said Secretary.

(Signed) VICTOR LOISEL,
U. S. Marshal,
By T. F. LAICHE, *D'y.*

79 *Subpœna in Chancery Issued to the Railroad Commission of Louisiana July 24th, 1907.*

UNITED STATES OF AMERICA:

The President of the United States to the Marshal of the Eastern District of Louisiana, Greeting:

You are hereby commanded to summon the Railroad Commission of Louisiana to appear before the Honorable the Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden on the first Monday of September 1907 then and there to answer a Bill in Chancery, filed against it wherein the Cumberland

Telephone & Telegraph Company is Complainant and said Railroad Commission of Louisiana is Defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 24th day of July in the year of our Lord one thousand nine hundred and seven and 132nd year of American Independence.

[SEAL.] (Signed) H. J. CARTER, *Clerk.*

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States Circuit Court, at Baton Rouge, Louisiana on or before the first Monday of September 1907 otherwise the bill may be taken *pro confesso.*

(Signed) H. J. CARTER, *Clerk.*

Marshal's Return on Subpœna in Chancery.

Filed July 26th, 1907.

Received by U. S. Marshal, New Orleans, La., July 24/07, and on July 25/07, I served copy hereof on the Rail Road Commission of Louisiana, by handing the same to W. M. Barrow, Secretary of said Commission, in person in the office of said Commission, at Baton Rouge La. The President of said Commission, being absent from Baton Rouge, at the time of said service, which fact I learned by interrogating the said Secretary.

(Signed) VICTOR LOISEL,
U. S. Marshal,
By T. F. LAICHE, *D'y.*

Endorsed: United States Circuit Court, Baton Rouge Division. No. 66. The Cumberland Telephone & Telegraph Company *vs.* The Railroad Commission of Louisiana.

80 *Evidence Offered and Filed on Application for Injunction.*

Testimony for Complainant, Taken at Nashville, Tenn.

Filed July 30th, 1907.

In the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana, at Baton Rouge.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Depositions for Complainant of ——.

H. Blair Smith, Auditor..... 2 9
James E. Caldwell, President..... 63 89

81 United States Circuit Court, 5th Circuit and Eastern District of Louisiana, Baton Rouge Division.

No. 61.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

To the Honorable Walter Guion, Attorney General of Louisiana, Counsel for Defendant:

Please take notice that the plaintiff herein will take the testimony of Messrs. James E. Caldwell, Leland Hume, T. D. Webb, and H. Blair Smith, all of whom reside at the City of Nashville, State of Tennessee, and others, each and all of whom reside more than one hundred (100) miles from the place of trial herein, and more — one hundred (100) miles from any place at which a Circuit Court of the United States for the Eastern District of Louisiana is appointed to be held by law, at the final hearing for use on behalf of the plaintiff, before Buford Duke, Esq., a Notary Public in and for the County of Davidson, Tennes-ee who is not of counsel not interested in this cause, at the office of the Cumberland Telephone & Telegraph Company, corner of Church Street and Third Avenue North, Nashville, Tennessee, at ten o'clock A. M. on May 8th, 1907, and continuing from day to day until completed; and such testimony will be so taken in accordance with the provisions of Sections 863, 864 and 865 of the Revised Statutes of the United States and the equity rules.

(Signed) DENEGRE & BLAIR,
" VICTOR LEOVY,
Solicitors for Plaintiff.

Dated at New Orleans, April 13th, 1907.

Service acknowledged April 13, 1907.
(Signed) WALTER GUION,
Att'y Gen'r'l, Counsel for Defendant.

82 In the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana, at Baton Rouge.

No. 61.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

The Depositions of H. Blair Smith, James E. Caldwell, taken in Nashville, Tenn., May 8th, 1907, at the office of the Cumberland Telephone and Telegraph Company, pursuant to notice accepted April 13th, 1907, and attached hereto.

It is agreed that these depositions when written out and sworn to and subscribed by the witnesses, shall be forwarded by mail to the

Clerk of the United States Circuit Court for the Fifth Circuit of the Eastern Division of Louisiana, at Baton Rouge, La., to be filed as evidence on behalf of the Plaintiff.

It is agreed that the formal caption and certificate and other formalities with respect to the taking of said depositions are waived.

Present, on bahalf of plaintiff, W. L. Granbery; on behalf
83 of defendants, E. Howard McCaleb, Jr., and Buford Duke, Stenographer and Notary Public.

All objections and exceptions for competency and relevancy, are expressly reserved.

The said witness, H. BLAIR SMITH being first duly sworn, deposed as follows:

Direct examination.

By Mr. GRANBERY, for Plaintiff:

Q. State your name, age, residence and occupation.

A. My name is H. Blair Smith; I was thirty years old my last birthday; my occupation is auditor for the Cumberland Telephone and Telegraph Co., and I reside in Nashville, Tenn.

Q. How long have you been connected with the Cumberland Telephone and Telegraph Company?

A. Something over thirteen years.

Q. What positions have you held and for what periods of time?

A. I came in as toll audit clerk, have kept rental books, toll books, general ledger, acted as cashier and was made auditor about seven years ago, and I have continuously since that time held the position of auditor.

84 Q. I will ask you to state what are your duties as a auditor and what have those duties been for the past five years?

A. To see that the receipts, or rather, that the earnings of the company are accounted for and that it is expended as—that its expenses as incurred are approved and entered on the books properly.

Q. Please state whether or not the books in your office and in your charge, correctly show the expenditures and receipts of the plaintiff company, year by year, for the past eight years?

A. They do.

Q. Are they correct?

A. I believe them to be.

Q. I hand you a statement purporting to be the receipts and disbursements of the plaintiff company in the State of Louisiana for the year ending June 30th, 1906, and will ask you to state by whom said statement was made up, what it shows and whether or not it is correct?

A. You say disbursements, but included in disbursements is depreciation. This statement was made in my office under my supervision, from the books of the company and it includes the earnings from exchange service, toll service and miscellaneous revenues accruing in the State of Louisiana and the disbursements, that is, the expenses and disbursements incurred in the State of Louisiana for

the twelve months ending June 30th, 1906, and I believe it to be correct.

85 Q. Please state the net earnings from the business of the plaintiff company in the State of Louisiana for the year ending June 30th, 1906?

A. $266,249.56.

Q. Have you separated the receipts and disbursements from exchange service and toll line service?

A. I have separated the receipts, but not the disbursements.

Q. Is it possible to sep-rate the disbursements?

A. I believe not.

Q. Have you endeavored and made inquiry with respect to that question; if so, state what that effort has been and what the inquiries have been.

A. Some years ago it was agreed by a number of the telephone companies operating under the Bell license to make an attempt to separate expenses incurred in operating and maintaining exchange service and toll line service. This company failed to get results, and I have inquired of other auditors if they have succeeded, and among those I questioned closely was a man in Boston, recognized as an expert in the telephone accounting business and he stated that he had not seen any company get successful results or practical results.

Q. Were these efforts you speak of on the part of the plaintiff company, made by you?

A. Yes sir.

86 Q. Will you state some of the difficulties encountered and why in your opinion it is not possible to separate these accounts.

A. The property carrying exchange lines is utilized for toll lines and *vice versa;* the employés to maintain the wires must work with the wires of both classes; the operating force must handle both classes of messages; the collectors must handle both classes of revenue, and the general office, auditing the disbursements must also handle expenses incurred for both classes of property; the class of help that is employed in repairing the toll lines is not sufficiently experienced to keep accurate account; and the dead time,—by that I mean, the time when the repairer is not doing anything at all, can not be proportionately divided or proportioned accurately; and I might add here, the expense in doing this, or attempting to do this is too great.

Q. State whether or not it is more economical to operate the exchanges and the toll lines as a whole, than it would be to operate them separately, having separate poles, separate employés, separate repairers and making the long distance business or toll service and exchange service distinct?

A. It is cheaper to operate them together.

Q. Is that a material item?

A. Very material.

87 Q. Would you be able to give any estimate of what would be the difference in cost in the State of Louisiana?

A. I could not, without giving figures from records.

Q. What do you mean by exchange service and toll line service?

A. Exchange service is understood to mean that service given to a person contracting to pay a certain rental for a given period of time of service, within a given area. Toll line service is a charge made for each conversation between two distant points.

Q. In other words, the exchange service is for connection and unlimited service within the exchange area, and with all other patrons connected with that exchange?

A. Yes sir.

Q. And toll line service is where you use the toll lines connecting different exchanges?

A. Yes sir.

Q. How many exchanges did the plaintiff company operate in Louisiana during the year ending June 30th, 1906?

A. Fifty nine.

Q. Do you know approximately the number of toll stations from which toll messages could be sent in Louisiana during that period?

A. I can get that information if you will leave that open to be supplied later.

A. Toll stations under strict classification, 315; outlying post-offices from which tolls messages can be sent and receiving exchange service, 202; exchanges, 59; number of towns villages and post-offices having toll service, 576.

88 Q. Will you attach the statement you have heretofore referred to, as Exhibit No. 1 to this your deposition?

A. Yes sir.

Q. That statement shows the total receipts and disbursements for both classes of service in Louisiana, for the period mentioned?

A. Yes sir.

Q. Does the company keep any records separating the two items?

A. It separates the revenue, but not the disbursements.

Q. I will ask you to state whether or not the schedule of rates in force at the time the defendants ordered a reduction, was in excess or below the toll line rates of the entire system?

A. The same.

Q. Please state the territory covered by the plaintiff company during the period under discussion?

A. The Southern counties of Indiana, southeastern counties of Illinois, the larger part of the states of Kentucky and Tennessee; the whole of the states of Mississippi and Louisiana.

Q. I will ask you to state whether or not the expenses of construction and maintenance and giving service, operating expenses, are higher or lower in the State of Louisiana than the rest of the territory in which the plaintiff operated?

A. Higher.

89 Q. Can you give the reasons?

A. Construction is more difficult on account of the character of the soil, the methods of transportation, the wages paid employés, and the boarding of the work gangs and the supplies are shipped a greater distance.

Q. Do you know whether or not the elements have anything to do with the increase or decrease of expenses of maintenance proper in the State of Louisiana as compared with other states in which the company operates?

A. The property is less stable.

Q. Why is that?

A. The water has a bad effect upon the poles, and the poles are not as firmly set in the ground, so that they are more subject to interruption by storms.

Q. What amount do you charge up, in your statement, for depreciation?

A. Seven and one half per cent. of the cost of the property, less the amount expended actually on reconstruction work, reconstructing the property.

Q. Is that per annum?

A. Per annum, yes sir.

Q. I will ask you to state whether or not from your experience in the telephone business and in the auditing department it justifies those figures?

A. I believe so.

Q. Do you know the amount generally set aside for depreciation by telephone companies throughout the country. The figures you have given are the result of your experience and the experience of the company in the past, and is not based upon other companies' experience. Is that correct?

90

A. Yes, and furthermore, on the special report made for this Railroad Commission by Mr. George Wilkinson.

Q. Do you know what would be the reduction, or what would have been the reduction in the gross revenues of the company for the fiscal year ending June 30th, 1906, if the rates proposed by the Railroad Commission, had been enforced, as compared with the rates actually in force?

A. About forty thousand dollars per year.

Q. Are you prepared and will you, if desired by defendants' counsel, make up a statement similar to the one you have filed, for the period of time subsequent to June 30th, 1906, similar to the one you have already filed?

A. I am, and will do so.

Cross-examination.

By Mr. McCaleb, for Defendants:

Q. The statement that you have offered in evidence and that you have referred to here, is a part of a statement that was furnished the State Railroad Commissioners in June 1906?

A. I can not say.

Q. I hand you a statement furnished by the Cumberland Telephone and Telegraph Company, of its annual report to the Railroad Commission of Louisiana for the year ending June 30th, 1906; will you please state if that statement——

91

A. I didn't make this statement up, but I will gladly compare it and tell you what it is.

Q. I want to know if that annual report furnished by the Cumberland Telephone and Telegraph Company to the State Railroad Commission, whether it covers the items in this statement you have filed here?

A. I didn't make this one, I can not say unless you give me time to compare them.

Q. Who made it?

A. The treasurer. This report was made from the treasurer's office.

Q. You didn't make that report at all?

A. The treasurer gets any figures from me that he desires.

Q. In other words, you furnished the treasurer with that report, is that correct?

A. I can not say that. (Witness examines report.) It is the same thing as this.

Q. Did you furnish the treasurer with the other items on that report made to the State Railroad Commission. Examine the whole report from top to bottom?

A. It is hard to say whether I furnished the treasurer with this, or not; I take it his office made it; I can't tell whether I furnished him with this or not, until I take it and compare it with my

92 records.

Q. Now take the second page; did you furnish the treasurer with the statements on that second page?

A. None of those are from my office; they are gotten from the secretary's office.

Q. Then you know nothing at all about the items on that second page?

A. No items on that.

Q. Now, take the third page; did you furnish the treasurer with those items?

A. I believe so, except that I would not furnish him any estimated figures.

Q. You didn't furnish him any estimated figures on that page?

A. No sir.

Q. Take the next page, the fourth page?

A. I can not say whether I furnished them to him or not but they look very much like the statement over there.

Q. You can not say whether you furnished the items on the fourth page?

A. I furnished him nothing regarding real estate, nor distribution of property, but I did furnish him with the income from the property.

Q. Now, do you know from whom the treasurer obtained these figures concerning the distribution of property and the description of the property?

A. I can not say.

93 Q. Are you not familiar enough with the offices of the company to know who furnished these items?

A. It no doubt came from the local offices?
Q. Local offices in Louisiana?
A. Yes sir.
Q. In what form does it come?
A. I can not say.
Q. Does it come in the form of reports?
A. I don't see them.
Q. You know nothing about that?
A. No sir.
Q. Now take the items on the next page, the fifth page and answer my original question with respect to those items.
A. I furnished the expenses; I furnished the general exhibit; I can not identify the income account, it seems to be changed in purple figures, I don't know who changed it.
Q. It wasn't made in your handwriting was it?
A. No; it is different from the rest of the figures on the statement.
Q. The treasurer could possibly explain that, couldn't he?
A. You will have to ask him.
Q. Take the next page, the sixth page; did you furnish the statement on page six, showing the general balance sheet?
A. Yes; I furnished the number of subscribers as appears upon the appended sheet in typewriting.
94 Q. Now, look at the next page, the seventh page, and state if you furnished the value of the exchange property in Louisiana?
A. I did not.
Q. From what source, if you know, did that come?
A. I don't know.
Q. Take the next page and state if you furnished that to the treasurer, showing the receipts and expenses at exchanges in the State of Louisiana up to June 30th, 1906?
A. Yes sir.
Q. Now, could you state, by looking at the receipts and expenditures in that report, whether they correspond with the receipts and expenditures furnished by you to-day and about which you were asked the question, and please mark that for identification, that statement filed by you?
A. It is marked Exhibit No. 1 to my deposition.
Q. Taking up the item of telephone rentals under the head of gross earnings, I notice that you have placed, for the Abbyville telephone, rentals for the year ending June 30, 1906, the sum of $5,342.25. From what source did you obtain that item?
A. Rental service, rental earnings.
Q. How did it come to you, in what form?
A. Payments from subscribers for exchange service.
Q. The subscribers would send the money to you direct?
A. It was collected locally.
95 Q. Now, the manager in charge of that exchange would collect it from the subscribers, is that correct?
A. Yes sir.

Q. And he would take this money and send it on to the company?
A. Yes sir.
Q. Send it on to you?
A. He would deposit it in bank to the credit of the company, subject to the treasurer's drafts.
Q. And the voucher for the same, to whom would it go?
A. To the treasurer.
Q. How does this item appear upon your books?
A. We have the name of every subscriber in the exchange at Abbeville on our books and we extend on those books the earnings for each month and send the manage the rental statement, which he takes and checks on his books, approves and returns to us, and he must account for the collections from that.
Q. Now, that statement that is returned by the local manager to whom is it sent, to what officer of the company?
A. The auditor's office.
Q. And from that statement you enter it upon your books, don't you?
A. Yes sir.
Q. The original statement made by the local manager?
A. No, the original statement is made in the auditor's office.
96 Q. Then it is sent to the local manager?
A. For him to check and make corrections on his books or on the statement.
Q. Then he returns the statment back to the auditor's office?
A. Yes sir, certified.
Q. Have you got those statements?
A. Yes sir.
Q. From that statement then, you enter it up on the books?
A. Yes sir.
Q. And from that entry you bring it down on this report you have made; is that correct?
A. Yes sir.
Q. Have you got those monthly statements?
A. Yes sir.
Q. Would you kindly furnish them to me?
A. For Abbeville?
Q. If you could furnish them for all these, so we could check them up, we would prefer it?
A. It is not the same for two other points, New Orleans and Shreveport, they use a different system, but I can furnish you the reports showing the rental earnings for every station in Louisiana.
Q. I would like to have those reports?
A. You could not carry them.
Q. I would like to have them here so we can verify them?
97 A. I will send upstairs and get them for you.
Q. Now, you stated that there was a different method of checking up with New Orleans and Shreveport. In what way is it different. We are speaking of telephone rentals?
A. The rental earnings reports for those two points originate at the local exchange. They make for us a classification of the rates

of the subscribers at those points and by multiplying it by one month, the pro rata for one month, we arrive at the earnings, of course considering any increase in subscribers and deductions for discontinuances.

Q. Now, coming to the next item, as to toll line receipts. We will take Abbeville, which shows receipts from toll lines $496.96; how does that amount come into your books, the method of it?

A. The local office makes up for us monthly a toll report, showing by stations the revenue originating at the local exchange and it is also of its toll stations, and we consider that as the gross receipts at Abbeville, but Abbeville is not allowed but fifteen per cent. of that for operating and collection expenses, and other expenses in the toll line.

Q. Is that report sent to you by the local office?

A. Yes sir.

Q. You have those reports too?

A. Yes sir.

Q. I wish you would produce them too?

98 A. Yes sir.

Q. Now, the next item, under the head of gross earnings is for rents and other income. Will you please state what are the sources from which this comes?

A. Advertising on exchange directories, profits on items of material sold and work performed; I think that will cover the majority.

Q. Don't you have an item for leased wires?

A. Yes sir.

Q. Is that item included in this rents and other incomes?

A. Yes sir.

Q. Haven't you also private branch exchanges?

A. Yes sir.

Q. Is that included in this?

A. Exchange service; it is included here in exhcange service.

Q. The first item?

A. Yes sir.

Q. But, private wire lines?

A. Leased wires is included under toll line revenue.

Q. Then, it is not included under rents and other income?

A. No, it is included in the second column, in the column headed, toll service.

Q. Doesn't the company also do a telegraph business?

A. Yes sir.

99 Q. Now, under what head of revenue, or what item of revenue would the receipts from the telegrams come under?

A. Toll service.

Q. Doesn't the company also do a slot machine business, you know what I mean, pay station slot machine?

A. Yes.

Q. Under what head would that come?

A. Under exchange service.

Q. Now, I wish you would give me the report for toll service and also the report on miscellaneous, that is issued also by the local manager, isn't it?

A. The billing is done from this office; I could do it, but it would entail a month's work to get it out for you.

Q. Now, to recapitulate a little; this item of miscellaneous revenue includes advertising and what else?

A. Profit on little sales of material that we would make, and possibly moving any part of routes for public service carriers and small items that we can not classify under the other heads.

Q. Mr. Smith, I notice at the bottom of your statement, other earnings and expenses, other than for exchanges. What does that cover?

A. Receipts from sub-licensees, from telegraph service, and a proportion of the toll line receipts.

Q. What do you mean by that?

A. Eighty-five per cent. of the exchange toll line receipts.

Q. What becomes of that other fifteen per cent.?

100 A. That is apportioned as the earnings of the exchange, to cover operating, etc.

Q. To cover operating expenses of that exchange?

A. Yes sir.

Q. What report does the local manager make to you respecting the operating expenses of that exchange?

A. He makes no report; he sends in receipts for his disbursements.

Q. And, if it does not reach the fifteen per cent., what becomes of the difference?

A. If what does not reach fifteen per cent.

Q. The fifteen per cent. he retains?

A. He does not retain it; we apportion it at this office.

Q. Is there any other item of revenue that is not covered by this report, that you can think of?

A. No.

Q. You stated that these receipts show the amount received from leased wires?

A. Yes.

Q. What is the agreement you make relative to leasing these wires?

A. In what way?

Q. Do you make contracts with people that lease these wires?

A. Yes sir.

Q. Have you those contracts?

A. Yes.

101 Q. I wish you would furnish those original contracts?

A. Now, our leased wires, many of them are inter-state.

Q. I wish you would exclude the inter-state?

A. I can not, because I have apportioned to you and given you your pro rata of any inter-state wires. I doubt if we have any that are not inter-state.

Q. Now, in this statement of revenue you have excluded all inter-state revenues or receipts?

A. I have not; I have given you the originating business in the State of Louisiana, no matter whether it went beyond the line or not.

Q. I would like you to exclude all the inter-state receipts. How do you arrive at the proportion of inter-state receipts?

A. We have given you everything originating in the State of Louisiana and nothing originating out of Louisiana.

Q. The entire revenue?

A. Yes sir, except as I said, on through leased lines, then we have given you your pro rata.

Q. Now, coming to the expense account. We will first take up operating expenses. What does that item include?

A. Salaries paid for operating exchange and toll lines, collecting and accounting, the rental of properties used for the operating purposes and incidental expenses in connection with that business, light, heat, water, etc.

Q. Do you include taxes under that head?

A. No.

102 Q. Under what head do you include taxes?

A. General expenses.

Q. Then, under the head of operating expenses, you include salaries, wages, light, rent, heat and incidental expenses?

A. Yes sir, collecting, accounting, etc.

Q. Now, what do you include under the head of general expenses?

A. Taxes, postage, printing, stationery, directories and the pro rata of the expenses of maintaining the general office.

Q. Does that include the local expenses too?

A. Yes sir.

Q. The pro rata is the salaries and wages of maintaining the general office?

A. Rent, light and heat, too.

Q. Include traveling?

A. Traveling, it would include traveling only of general officers; operating would include travel of local operators.

Q. Now, let us come to maintenance; what does that include?

A. The salaries and wages of men employed in maintaining and reconstructing the property, rent, light, and heat used by them, material, traveling, damaging compensation and incidentals.

Q. Is there anything else you can think of?

A. And insurance.

Q. Would it include conduits?

A. I said materials.

103 Q. Now, the rental of instruments, what does that item include?

A. It includes the actual rental paid for the use of the instruments.

Q. In what way is that item incurred?

A. A percentage of the gross revenue from telephone earnings.

Q. Explain that pleas-, more fully?

A. The instruments are furnished, the receiver and transmitter are furnished by the American Bell Telephone Co., and they are replaced when they become defective, by the American Bell Telephone Co. without expense to us; we pay in exchange for the use of

them, four and one half per cent. of the revenue earned by the use of those instruments.

Q. Therefore you have a contract, I presume, with the American Bell Telephone Co. wherein you agree to pay the American Bell Telephone Co. for the use of the instruments they furnish you?

A. Yes sir.

Q. These instruments are not owned by you, are they?

A. No.

Q. And that under that contract you pay the American Bell Telephone Company four and one half per cent. of the earnings derived from the use of those instruments?

A. Yes sir, and the company is at no expense in either purchasing these instruments or maintaining them, nor for engineer-
104 ing expenses or services.

Q. Then the expense for maintaining these instruments is not included under your head of maintenance at all?

A. Yes, for this reason; if an instrument becomes defective, it is an expense to go and replace the instrument, but as to anything additional to what a man can do in wiping the instrument off or correcting a defect in a simple manner, we incur no expense. If the instrument is defective, we take it out and ship it back.

Q. This agreement you have between your company and the American Bell Telephone Company, that is a written agreement, I suppose, is it?

A. Yes sir.

Q. I wish you would let me see that?

A. Yes sir I will do so.

Q. Now, coming to the item about debts, I see you have that item charged up as an expense. What does that item cover? That item of bad debts?

A. It includes and covers amounts which have been included as earnings which prove uncollectable, and have been charged off the books.

Q. To whom is this item of bad debts paid; is it paid to anybody. You have it under the head of expenses, and I want to know to whom it is paid?

A. We charge it off the books to expense, general incidental, in this, we have taken it out of general and made a separate item in order to show what we lost through uncollectable ac-
105 counts.

Q. In other words, it means what it says, it is a bad debt?

A. Yes sir.

Q. And you charge it up against expense or to expense?

A. We charge it against earnings.

Q. Do you consider that a proper place to put that charge?

A. Yes.

Q. Why?

A. It is an expense of carrying on the business; we earned it and could not get it.

Q. In other words, it is a loss?

A. Yes, a loss.

Q. Now, that item of bad debts on this statement of yours, totals the sum of $9,526.99. Was this item of bad debts incurred during the year?

A. Practically.

Q. Did you carry over any bad debts from the year previous?

A. Yes, and carried some over to the next year.

Q. Then as I understand you, if the bad debts of one year amount to ten thousand dollars, you carry that same item you charge it to expense for that year?

A. We charge it to expense at the time we consider it is worthless.

Q. And, it is charged up to that year?

A. Yes sir.

Q. Then, you carry it over and charge it to expenses the next year?

A. In some instances that is correct.

106 Q. When it is paid you do not?

A. If paid or not, we credit it to the year in which it is earned. That is, the moment we earn anything, it is credited to earnings, and when we find we can not collect it, we charge it to bad debts.

Q. Then you carry it over to the next year?

A. Sometimes.

Q. When is the time you do not carry it over?

A. Well, it takes possibly ninety days to determine*d* whether it is good or bad, so that the earnings in the first part of the year, are invariably charged off if uncollect*a*ble in that year; earnings in the latter part of the year may be carried over to the first part of the following year.

Q. Now, if you had a bad debt of say one hundred dollars in the year 1904, would you carry it over as a bad debt chargeable to expense for the year 1905?

A. Possibly.

Q. Don't you do it, as a matter of fact?

A. We make no attempt to do it.

Q. You say you do it possibly; now if you did it in the year 1905, and it was still a bad debt and uncollect*a*ble would you carry it over to the year 1906?

A. No sir.

Q. Why?

A. We never carry them that long.

Q. You carry them for two years, don't you?

A. We never carry them longer than about ninety days,

107 unless there is some hope of getting it, and we usually prefer to charge it off the books and hold a memoranda.

Q. On your books, don't you carry a suspension account?

A. We do, and we have what is known as a suspension account now, but it is included in expense.

Q. What is that suspense account?

A. It is the bad debt account.

Q. And you include the suspension account in your expense account?

A. Yes sir.

Q. Which is covered by the bad debt item?

A. Yes sir.

Q. When do you strike off from your suspension account a bad debt, or do you ever do it?

A. When it goes there it is struck off. In order to transfer a bad debt to the suspension account, the local office is allowed to take credit for it and it is transferred from the account of the local office to suspensions and comes off the earnings as an expense in the month in which that is done.

Q. Now, we come to the item of depreciation. What do you mean by depreciation?

A. It is the deterioration of property which is continually going on, but which can not be repaired as it deteriorates.

Q. Don't you maintain that property?

A. We do, but you might take the case of a switch-board, to make it plain; the life of that switch board is estimated
108 at near fifteen years. Each year it is worth a little less than it was when put in, and its life is a little less, but you can not do anything to that switchboard then during that year, to make its life a year longer, therefore that switch board has deteriorated a certain proportion of its value during that year, and that is applicable to all other property.

Q. How do you reach that proportion of depreciation?

A. The percentage?

Q. Yes?

A. It is one of the telephone problems.

Q. Isn't it an arbitrary percentage that you strike off?

A. I could not call it arbitrary; I should call it an engineering problem.

Q. You pay out no money to that end, do you?

A. Not at the time the depreciation is considered.

Q. Do you consider that an expense?

A. I consider it an expense which must be cared for at some future time.

Q. In the meantime the property is being maintained and the maintenance account covers the item of maintenance?

A. The current repair account.

Q. That is the maintenance account?

A. Yes, part of it.

Q. You say the life, for instance, of a switch-board is fifteen years or about that?

A. Yes sir.

109 Q. At the end of the fifteen years, what do you do with that switch-board?

A. It is junked.

Q. Then, you must replace that switch-board by another one?

A. Yes sir.

Q. How do you account for that replacement?

A. The cost of the old switch-board less any salvage is charged against maintenance reserve.

Q. What do you mean by maintenance reserve?

A. That is a reserve set apart out of the earnings, to care for large amounts of reconstructed, depreciated work.

Q. Do you charge that account with the value of that switch-board at the end of the time it is considered worthless.

A. At the time it is taken out.

Q. You charge that account with the value of the switch-board?

A. With the original value of the switch-board less the salvage arising from the junking process.

Q. You call that deferred maintenance reserve?

A. Reserve for deferred maintenance.

Q. Now, how is that reserve maintenance account created?

A. It is created by apportioning to it, at the end of the year, a certain part of the earnings.

Q. Do you budget your maintenance account?

A. I don't understand the question.

Q. Do you apportion any sum of money to maintenance at
110 the beginning of the fiscal year?

A. At the end of the fiscal year, a sum is apportioned to it then.

Q. Now, if that sum of money which I call budgeting, does not reach the amount budgeted or apportioned, what becomes of the difference?

A. I don't understand your question.

Q. In other words, suppose you budget a million two hundred thousand dollars to maintenance this year, or apportion that sum to maintenance account and you only spend towards maintenance, maintaining the plant, one million dollars; what becomes of the two hundred thousand dollars?

A. It would remain in the reserve account, would be the reserve to take care of that maintenance which you did not take care of during that year.

Q. That is the reserve maintenance?

A. Yes sir.

Q. What is the percentage of depreciation that you charge up to depreciation account?

A. We figure seven and one half per cent. of the cost of the property, and deduct from that the money which was actually spent during the year in reconstruction.

Q. Now, the money actually spent during the year in reconstructing, does that come out of the maintenance account?

111 A. That is charged up to the month's expenses; each month, a certain amount is expended in reconstructing work, reconstructing *work* which has heretofore been built.

Q. Isn't that sum represented in the maintenance item?

A. The reconstruction is.

Q. Now, what do you do with this money that you strike off for depreciation every year?

A. The accounting?

Q. Yes, you have an account here of depreciation, for instance for the year ending June 30, 1906, $192598.13 what becomes of that money?

A. That money stays in the plant, stays in the treasury.

Q. It is in the treasury of the company?

A. Or is expended for construction.

Q. It is expended for construction.

A. It is used; the actual money is used for any purpose for which it is necessary to use it.

Q. Where is it to be used for construction?

A. The money itself is all in the same general fund, and when you set aside a hundred thousand dollars for the purpose of reconstruction, it does not mean you are going to take that one hundred thousand dollars and put it in the bank and leave it there, but means you can use that as it is necessary to use the actual cash, while the deferred maintenance account has a credit of that amount. To answer your question specifically, you might say this, that the deferred maintenance account is built up and as long as it has a credit
112 to it, you have set aside that sum to care for depreciation, but where the actual money is, it is in the general treasury of the company.

Q. Therefore, you pay out nothing during each of these years for depreciation?

A. I can not say we pay out nothing for depreciation; we pay out a great deal for depreciation.

Q. In what way do you pay it out?

A. We pay it out at different times, when we install a new switchboard, when we rebuild an exchange and any extensive piece of property.

Q. In other words, you pay it out for extending your lines?

A. Not extending lines, rebuilding lines and other property.

Q. Now, haven't you a construction account?

A. Yes sir.

Q. Where do you get the money to construct a new switch-board, for instance, or a new line or exchange and lines?

A. From the issuing of capital stock and from any surplus earnings at the time, which the company may have.

Q. These surplus earnings are in the general treasury of the company, are they not?

A. Yes.

Q. What account is charged with the expense of rebuilding?

A. Reconstruction, or, to give the exact name, main-
113 tenance reconstruction.

Q. Is that included under the account for maintenance?

A. Yes, sir.

Q. Now, what account is charged with the construction of new lines?

A. Construction.

Q. Have you got your ledger showing that construction account?

A. Yes sir.

Q. Does that account of construction include betterments?
A. If you will define betterments, I can say.
Q. Isn't a betterment a permanent improvement?
A. Is that the meaning you give it?
Q. That is the meaning?
A. If it is permanent improvement, without being a substitution that has already been constructed, it is included in the construction account.
Q. Where it is a substitution, it is included in the maintenance account?
A. Unless it is a more expensive and more permanent substitution.
Q. Then, where does it go?
A. The excess, into construction.
Q. In that case, you would apportion a part to maintenance and the other part to construction?
A. Yes, sir.
114 Q. The excess to construction, and what is necessary for rebuilding, to maintenance, is that correct?
A. Yes sir.
Q. Does your ledger show the account, reserve for maintenance?
A. The reserve for deferred maintenance.
Q. Does that account show on your general balance sheet?
A. Yes sir.
Q. Under what head?
A. Reserve for deferred maintenance.
Q. Now, coming to your general balance sheet, there is an item here for reserve in your statement of June 30, 1906? put down at $1,087,381.89. What are the items of reserve. Please state the accounts which cover that item of reserve as shown on the general balance sheet?
A. The items contained in it?
Q. Yes, what are the items contained in that?
A. I can not answer without the records.
Q. What is that reserve for?
A. It is for the reconstruction of the existing property.
Q. Anything else?
A. It is a reserve for the company and will more than likely be used exclusively for that.
Q. How do you get that reserve?
A. It has been built up for a considerable period of time.
115 Q. Where did you get it, though?
A. From earnings and profit.
Q. Made from year to year?
A. Yes sir.
Q. Will you please state specifically what it is to be used for, if you can?
A. My present information would lead me to believe that it is to be expended for the reconstruction of the property.
Q. In other words, where a line has deteriorated in value so it

requires reconstruction, you take from this fund for the purpose of reconstructing that work?

A. Yes sir.

Q. Would that apply likewise to the switch-board?

A. Yes sir.

Q. Now, if a switch-board requires to be taken out, and a new switch-board put in, would you take it from this account to pay for that new switch-board?

A. It depends upon the size of it; if it is one of the large switch-boards, which is too expensive to be charged against earnings for the month, it must be charged against this, and if the reconstruction during the month is in excess of what is considered should be taken out of the current earnings, then it is charged against reserve.

Q. In other words, if the reconstruction is unusual, you take it out of this reserve fund?

A. Yes.

116 Q. But, if it is usual, you take it out of the maintenance account?

A. Don't take it out of the maintenance, it is charged to the maintenance account. No, not unusual*l*, but unusually heavy better explains it.

Q. Now I notice here in your general balance sheet that you have a surplus for the year ending June 30th, 1906, amounting to $1,940,842.70?

A. I don't think those figures are correct?

A. That is the figures furnished us as shown in Exhibit No. 2?

A. That is right, that is correct.

It is agreed that Exhibit No. 2 is the report of the complainant company made to the Railroad Commission for the State of Louisiana for the fiscal year ending June 30th, 1906.

Q. Where do you get that surplus?

A. Surplus earnings that has been built up from year to year.

Q. From the profits of the company?

A. Yes sir, from the net profits.

Q. Is that surplus shown there, over and above dividends that have been paid?

A. Yes sir.

Q. What is that surplus used for?

A. Invested.

117 Q. Invested in what?

A. I can not say in any specific item.

Q. Is it invested in new construction?

A. In the assets of the company.

Q. Is it invested in extending lines?

A. Some of it no doubt is.

Q. Is it invested in procuring new switch-boards?

A. I should say so.

Q. Will your books show what the company paid for its various properties in the State of Louisiana?

A. We can give you a fairly accurate statement of that.

Q. I wish you would furnish us that statement?

A. I will do so; I can give you an accurate statement, apportioning the cost of inter-state toll lines.

In my previous answer awhile ago, as to the items which composed the reserve of the company, is included reserve for insurance, reserve for unearned rentals, reserve for taxes, reserve for outstanding toll coupons, and reserve for contingent liability. The bulk of the reserve is deferred maintenance.

Q. Can you state approximately what is the capital stock of this company apportioned to the State of Louisiana or to the property in Louisiana?

A. I can not, without the records.

Q. Will you produce the record and let me find that out?

A. I can not without figuring it. Do you want me to

118 estimate it?

Q. Yes; In other words, the estimated value of the lines in Louisiana, including rights of way, instruments, batteries, they are given on Exhibit No. 2, furnished by the company to the Railroad Commission of Louisiana as $1,579,404.70. What percentage does that estimated value bear to the capital stock of the company?

A. About ten per cent. according to the figures here.

Q. Now, for the year ending June 30th, 1906, what was the total gross earnings of the company in the State of Louisiana?

A. $1,228,691.31.

Q. Now, excluding bad debts and depreciation, what were the total expenses?

A. $760,316.63.

Q. Now, the difference between these two items would give you the net earnings, excluding bad debts and depreciation?

A. No, it would not, for you have no right to take out bad debts, depreciation or interest.

Q. But, take it out for the purpose of the question?

A. It would give you a certain balance.

Q. Which would amount to $468,374.68?

A. Yes sir.

Q. Now, what is the dividend declared by the company on its capital stock?

A. Seven per cent.

119 Q. Was that for the year 1906?

A. Yes sir.

Q. Is that a fixed dividend? which you pay every year?

A. The directors determine on that, but it has been paid for several years past.

Q. What becomes of the amount of surplus earnings after the dividends are paid?

A. They are proportioned between surplus and maintenance reserve, or reserve for deferred maintenance.

Q. Now, what would be the dividend on the stock apportioned to Louisiana as shown by the previous question, ten per cent. of the stock?

A. I have not determined the proportion of the capital stock to Louisiana.

Q. But we have shown, or at least it has been shown that the estimated value of the property in Louisiana was $1,579,404.70. What would be the dividend, accruing to the part of the capital stock represented by that item of $1,579,404.70?

A. It would be seven per cent.

Q. Figure it out, please?

A. $110,558.33. But I think you are not using the net revenue in this. You are using figures which do not show the net revenue.

Q. That would be the dividend on the value of the property, if that property was represented by capital stock?

A. Yes.

120 Q. Now, what is the per cent. of gross telephone expense to gross telephone revenue, in Louisiana, excluding bad debts and depreciation?

A. We never figure it that way.

Q. Can't you figure it, by excluding those two items, Mr. Smith?

A. I can, but it would not be correct.

Q. Well, figure it?

A. Sixty one and a fraction per cent.

Q. Now, what would be the per cent. of net revenue amounting to $468,374.68 to the capital stock apportioned to Louisiana in proportion to the value of the property amounting to $1,579,404.70?

A. Almost twenty nine per cent.

Q. In your statement as to operating expenses other than general operating expenses, you stated that there was an item for rent, light and heat. What does that rent item include?

A. It includes all of the rental of the properties used for telephone purposes.

Q. Who pays that rental?

A. The company.

Q. Against whom is it charged?

A. It is charged against the expense items.

Q. In other words, where the company has to pay rent for a building for the purpose of carrying on its exchange, that is

121 charged as an operating expense, is that correct?

A. It is either an operating or maintenance or general expense, as here.

Q. Now, where the company owns its building, for instance, as in the State at New Orleans, is the rent of that building charged up in favor of the company, against the local office?

A. It is.

Q. And you enter that as an operating expense?

A. Operating or maintenance.

Q. In other words, where the company owns its own building, it charges up to the local office, the rental for that building?

A. It does.

Q. And is included in the item of operating or general operating expense?

A. It is included in the item of operating or maintenance.

Q. Now, coming back to the balance sheet for the year ending June 30, 1906, Exhibit No. 2, under the head of assets, I see that you have here the cost of your entire line to be $21,199,456.84. From what source did the company derive the money to pay for the cost of this line; your entire line?

A. From the sale of stock, sale of bonds, surplus earnings and reserve funds and borrowed money.

122 Q. Now then, the depreciation that is charged off each year is not a portion of it used for the purpose of extending lines, or buying new properties or construction?

A. We consider that a trust fund, which is to be invested until it is needed.

Q. Isn't it placed in the account reserved for deferred maintenance?

A. And necessarily must be in the assets in some form; I can not state specifically what form it is in.

Q. It may come under the cost of line?

A. It can come under any asset.

Q. Could it come under the head of purchase of real estate?

A. Possibly.

Q. Then, it is not used exclusively for the purpose of renewing the old equipments?

A. It is. It is a trust fund I say, which is used when it is required.

Q. And that trust fund is covered under the item of credits or liabilities, known as reserve for deferred maintenance?

A. The account of it is in the liabilities; the property it represents is in the assets.

Q. How do you carry your bad debt account into the general books of the company?

A. All bad debts are charged to expense. For the pur-

123 pose of record, we keep a separate account known as suspense. At the end of each month we charge to general incidental account, and that account is known as an expense account.

Q. Isn't it carried over to profit and loss, as represented in the liabilities on the general balance?

A. We have no account known as profit and loss, but it is something which must come out of the earnings.

Q. You don't carry your bad debt account at all in your general ledger?

A. Not in our assets.

Q. Or in your liabilities either?

A. No sir.

Q. Still, it is shown as an operating expense?

A. Shown on this statement separately; the same result could be secured by charging bad debts against earnings, but if we do that, we have no record to show what proportion of our bills are for bad debts.

Q. Wouldn't it be more proper to charge that as a deduction from income?

A. It could be done; I don't think it makes any difference.

Q. Do you know for what purposes the amounts received from the capital stock, is expended?

A. At the present time?

Q. Last year, or the year 1906?

A. It is all expended, except the cash balance.

124 Q. It is expended for costs of line?

A. Yes sir.

Q. Together with the surplus and the reserve, for cost of line, extending the line or cost of plant?

A. Yes sir, cost of plant.

Q. I wish you would examine this: I show you the annual report for the year 1906 purporting to be issued by your company. Will you please look at that and tell me if you have seen that report, and *it if* eminated from this company?

A. Yes sir. I have examined the paper handed me and I find it to be the annual report put out by the company for the year 1906, and attach it as Exhibit No. 3 to this my deposition.

The further taking of the depositions in this case was at this point adjourned until tomorrow morning at nine o'clock.

125 THURSDAY MORNING, *May 9th*, 1907—10 a. m.

The further taking of depositions in this case was resumed at ten o'clock this morning, at the same place, pursuant to adjournment of yesterday.

H. BLAIR SMITH, resumed the stand and further deposed as follows:

Cross-examination (continued):

A. I stated in my deposition on yesterday that the original rental statements approved by the local managers could all be furnished. These rental statements are preserved until the exchange is audited by the traveling auditor, they are of no further use then and are destroyed, as we have not the room to file them. The original records are, however, on the rental ledgers which are subject to the inspection of the defendants.

Q. In your testimony on yesterday, you state that it was more expensive to ship supplies to Louisiana, because of it being at a greater distance from the point of supply. How do you base that statement?

A. To give the exact details I would have to take the material; the wire comes from Chicago or the New England states.

126 In constructing lines in this locality we can get native poles which are practically not shipped at all, but can be delivered along the route; in Louisiana, they must be shipped from the New Orleans District to wherever the construction is going on; the switchboards for the smaller exchanges are constructed at the general shops of the company located in Nashville, and the freight from here to the Louisiana points is greater than our rates here.

Q. Would not supplies shipped from Chicago to New Orleans be shipped at a very small or low rate for the shipment?

A. I can not give you exact rates, to New Orleans proper, but you understand we have many exchanges in addition to New Orleans.

Q. Would not wire shipped from Chicago to New Orleans by the Illinois Central or by water route, be shipped cheaper than where shipped into Tennessee or to Mississippi or to Alabama?

A. I have not figures at hand; I can get them, but I think that is not the case.

Q. Isn't it a fact that water competition rates are cheaper than railroad rates?

A. We seldom use water.

Q. Now, isn't the water competition from the New England States to New Orleans or to Louisiana, cheaper than shipping by rail?

A. From the New England States to Louisville and to Nashville is cheaper than to New Orleans, even if you ship from New England by water.

127 Q. For instance, from Boston to New Orleans?

A. Yes sir.

Q. Are you positive of that?

A. Yes sir.

Q. Now, relative to your statement regarding the reduction of revenues under the new rates established by the Commission, now in litigation, you stated that that reduction, based on the business of 1906 would amount to about forty thousand dollars a year?

A. In making my figures I figured on the month of June 1906, I used the month of June only.

Q. You figured only on one month?

A. Yes sir.

Q. Would not you figure on the whole year?

A. I could figure on the whole year.

Q. I would prefer that you would take the whole year?

A. It required about five men for a week to get it for June 1906 alone.

Q. Then, your estimate is only based on the month of June 1906?

A. Yes sir.

Q. Don't you know that the month of June in Louisiana is a month we are not very busy, when not much business is being done?

A. If that is a fact, then the reduction would be greater than I have figured.

Q. Why would it be greater?

128 A. Because, if there is more business in other months, there would be more of a deduction.

Q. Wouldn't your receipts be more?

A. They would.

Q. Then how do you come to that conclusion?

A. You said that June was a comparatively quiet month.

Q. That is my information and that is generally understood to be a quiet month in Louisiana, in business?

A. In case it is a quiet month then my estimate of the loss in revenues would be less than for a month in which we did a lot of

business. Accepting your reasoning, you would increase the loss to the company if we took a month in which we did the greatest business; that would be when we would sustain a greater loss, by reducing our rates.

Q. Then, the sum and substance of your estimate is, the greater the business the greater the loss?

A. The more messages the more loss.

Q. The reduction made by the Commission in this case reduces the rates at long distance as well as at short distance, does it not?

A. I remember it as that.

Q. Now, if the rates at long distance were reduced, would not there be an increase in the business done at long distance, by virtue of the reduction?

A. The reduction I consider is so small in comparison on one message and to the man who pays the bill for that one message, that it falls so lightly on the user, the difference falls so lightly
129 on the user of the line, that the increase in messages would not be appreciable.

Q. Isn't it a fact though that as a general proposition the reduction of rates means an increase in the volume of the business.

A. It depends upon what percentage you decrease the rates.

Q. In this statement marked Exhibit No. 2 to your deposition on page 5 of the general exhibit, I notice that dividends declared during the year, apportioned to Louisiana stock, is put down here at $237,572.94. Will you tell me how that apportionment is made.

A. Those dividends were figured on twenty-one and three-tenths per cent. of the capital stock, which amounts *fo* $3,393,900 of stock for the part in Louisiana.

Q. How was that sum placed there on that statement; how did that sum of $237,572.94 come there. Did you apportion the Louisiana stock as being valued at $3,393,900?

A. The part of capital stock apportioned to Louisiana is $3,393,900, being on basis of construction in Louisiana to total construction. And this does not consider proportion chargeable to Louisiana of bonds, surplus reserves or borrowed money. Dividend specified by you is the dividend on stock only and does not include interest paid by us on these obligations.

Q. I forgot to ask you this; the poles you have in Louisiana. Can't you get them from the various lumber mills there?

A. We have found in Louisiana that the best poles to use are pine poles creosoted at the creosote works near New Orleans and that is a much more expensive pole than a native pole.

130 Q. Are all the poles you use creosoted?

A. The majority in Louisiana are.

Q. Mr. Smith, on examining the reports of the exchange managers, they do not seem to agree with your exhibit No. 1. Will you please explain these discrepencies?

A. Will you specify the town in which they do not agree, and permit me to submit a statement in detail.

Q. For instance, Rayne, La. we find that the total reported by the exchange manager for the year ending June 30, 1906, shows

$3,150.20 as gross exchange service, and your report Exhibit No. 1, shows, $3,168.70. Now explain that?

A. This indicates that we have shown in the earnings $17.50 more than the manager is billed with. This can be accounted for in several ways; some telephones are paid in advance; the statements to the managers show the amount of the bill to be collected in a given month; if this collection covers more than one month, the earnings are distributed throughout the months affected; telehones given to municipalities are estimated as earning a specified amount, but of course no bill is rendered therefor; subscribers reports are sometimes delayed in reaching the general office, which would necessitate the billing being made in one month and the earnings would be shown in the following month; in case telephones are rented by employés, they are billed to the manager at the regular rate and a voucher for the discount allowed the employé is accepted and charged against earnings. I think this explanation practically covers the differences existing.

131 Q. In looking over reports of managers, of the toll line receipts, I find a less amount than fifteen per cent. of the gross earnings, as testified to by you previously. Will you please explain that discrepency. For instance, Alexandria shows that the total tolls amount to the sum of $6,100.49, fifteen per cent. of which would amount to $915.07, whereas your statement, marked Exhibit No. 1, shows that fifteen per cent. to be $745.69?

A. The toll reports made by the Alexandria office represented the gross outward tolls collected at that exchange; in Louisiana, as elsewhere, we connect with many telephone companies termed sub-licensees; included in the tolls reported by Alexandria is revenue which must be paid over to the sub-licensees and charged against the amount shown on the manager's report. All messages sent by employés of the company, even though it is on our own business, unless actually testing the lines, must be reported and credit claimed in settlement by submitting an itemized voucher, approved by the superintendent; all rebates on account of the excess time charged or unsatisfactory service obtained, are charged against the amount reported by the manager. I believe this covers the differences.

Q. In your statement marked Exhibit No. 1, where is the remaining eighty-five per cent. of toll line business, under what head?

A. It is included in the column headed toll service, opposite the explanation, earnings and expenses from points other than

132 exchanges, amounting to $309,722.10.

Q. Mr. Smith, do you know the market value of the stock of the Cumberland Telephone & Telegraph Co.?

A. The most recent quotation I have seen was one hundred and eight.

Q. Are you in a position to know the market value of your bonds and debentures and if so, please give us those quotations?

A. The last sale of our five per cent. mortgage bonds that I am familiar with, was on a four per cent. basis. This was in the latter part of January 1907. I know of no sales of the debentures, but

the last quotation I have seen was ninety cents bid and a dollar asked. These debentures pay five per cent.

Q. Now, what is the amount of these debenture bonds and your mortgage bonds at the present time?

A. The amount of five per cent. mortgage bonds is $765,000 after deducting those in the sinking fund: the amount of the debenture bonds outstanding is $239,000.

Q. Or about $1,650 thousand dollars?

A. No, it is one million and twenty thousand dollars.

Redirect examination.

By Mr. GRANBERY, for plaintiff:

Q. The statement, Exhibit No. 1 to your deposition correctly shows all of the items of receipts from the business of the company in the whole State of Louisiana.

133 A. It does.

Q. You have stated that in ascertaining the toll receipts in Louisiana, you have included every message originating in the State of Louisiana, regardless of what point it goes to, is that correct?

A. In the case the money belongs to us, yes.

Q. And you have also included every message originating and ending in the State?

A. Yes sir.

Q. You have excluded messages originating out of the state and ending in the state; is that correct?

A. Yes sir.

Q. Why do you include all messages originating in the state and going out of the state, and exclude all originating out of the state and ending in the state?

A. For the reason that I believe it is entirely fair.

Q. Give your reasons for this belief?

A. The number of messages received at the various exchanges would approximately equal the number of messages originating in the various exchanges.

Q. Would it be practicable to accurately state the proportion of each message originating in the state and going beyond the State, and each message originating beyond the state and ending in the state?

A. It would entail an immense amount of detail and I think would be impracticable.

Q. Then state in a general way the extent of the work that

134 would be entailed, the length of time and the number of men that would be necessary to make up this statement for a year, in the State of Louisiana?

A. I believe it would take a dozen men not less than two or three weeks.

Q. Is that the basis upon which the company's accounts are kept for all of its territory?

A. It is.

Q. Is that the generally accepted method of keeping these accounts?

A. I think so.

Q. Now, you have stated that all of the bad debts of any one year are not included in the statement for that year, and my recollection is you have stated that it takes about ninety days usually to ascertain whether or not an account is uncollectable, and that therefore a statement for any year, the first months of the year would have charged against the business of that year, bad debts which originated in the year before, and that in the latter part of the year, you would credit accounts as good, which would be later ascertained to be bad, and would be charged off the following year. Am I correct in that?

A. You are.

Q. In the statement Exhibit No. 1 you have bad debts charged for that year: I will ask you to state whether or not the bad debts originating the previous year and included in the year for which your statement is made up, would be off-set by the bad
135 debts which are credited as earnings on your statement, but which are charged off for the year succeeding that for which your statement is made out?

A. I think so.

Q. Mr. Smith, with respect to the question of depreciation, did I correctly understand you to say that the amount set aside for depreciation might, or might not, be used during that year?

A. Yes sir.

Q. Whatever amount of it is used for that year, where is it shown in your statement?

A. It is shown in the maintenance reconstruction account, and the charges against reserve for deferred maintenance.

Q. I understand you to say this reserve maintenance fund is not in actual money, but is used by the company generally in its business; is that correct?

A. Yes sir.

Q. But, your books correctly show the amount set aside for that purpose and unused?

A. Yes sir.

Q. Why do you credit each exchange with fifteen per cent. of toll messages. Why do you use that percentage?

A. Our agreement with sub-licensee and other connecting companies specify that the company handling the business will receive for its services, fifteen per cent. of the tolls collected.

136 Q. State whether or not that is considered the proper proportion to charge for this purpose?

A. I believe it to be.

Q. Is that the amount that is used by the company in all of its connections with other companies?

A. In some instances it is less.

Q. State whether or not the present rates for toll line service and exchange service, in the State of Louisiana, make a reasonable return upon the capital invested in the business?

A. I think it would be fairer if the company got a better return.

Q. Mr. Smith, I want you to state the cost of the property of the plaintiff company in the State of Louisiana up to June 30th, 1906?

A. $4,711,942.70.

Q. Please state fully how you arrive at those figures?

A. When the company first entered the State of Louisiana, it did so by purchasing the property of the Great Southern Telephone and Telegraph Company. That company also had and operated property in the State of Mississippi; it was necessary at that time to apportion the investment between the two states and this was done and each exchange given its pro rata. Since that date, the amount expended for construction, has each month, been charged against the exchange or toll line which was constructed or extended in the State of Louisiana.

137 Q. In charging to construction account the amount expended in Louisiana, which, added to the cost of that part of the property in Louisiana purchased from the Great Southern Telephone and Telegraph Company, have you included any sum derived by the company from patrons?

A. The majority of it is from new capital.

Q. What do you mean by the majority; where did you get the money with which you built new lines and added to exchanges?

A. By the sale of stock, by the surplus earnings and from the reserves, by the sale of bonds and by borrowed money.

Q. When you say moneys for the construction of new property from the reserve, did you charge that as a permanent investment or a loan from the reserve account?

A. Loan from the reserve account.

Q. Please state the outstanding capital of the company on January 1st, 1898?

A. $1,695,700.

Q. Please state the increase in the capital stock from that date down to June 30th, 1906.

A. —

May 6, 1898	$1,179,200
April 3, 1899	584,200
September 30, 1899	864,550
May 25, 1901	1,467,400
December 16, 1901	1,871,200
March 2, 1902	1,693,950
December 23, 1902	2,339,050
February 1, 1905	1,754,300
February 1, 1906	3,362,400

138 Q. I will ask you to state whether or not the original and each of the subsequent increases in the capital stock represents a like amount of money received by the company?

A. I don't know anything about the original capital stock, but all additions since January 1st, 1898, have been paid in cash, dollar for dollar.

Q. Please state whether or not you have exhibited to Mr. Barrow

and counsel for the defendants, all papers and records requested in their examination or cross-examination?

A. Yes sir.

Q. When did the company purchase the property of the Great Southern Telephone and Telegraph Company?

A. I think it was about March 1st, 1898.

Recross-examination.

By Mr. McCaleb:

Q. What was the price paid for that property?

A. Fifty per cent. of its outstanding capital stock.

Q. Do you know what that was?

A. $945,580, but that stock had a contingency clause attached to it on account of a suit against the company, and whatever the Cumberland Company incurred or had to pay on account of that suit was deducted from the dividends on that stock.

Q. About what did that amount to; was it less than twenty thousand dollars?

139 A. Leave that open and I will supply the amount of it later. It is $23,452.50.

Q. Then, from the time that you purchased the Great Southern Telephone and Telegraph Company, you increased the efficiency of this plant?

A. Yes sir.

Q. Extended the lines, put in new switch-boards wherever it was deemed necessary and expended amounts for permanent improvements?

A. Yes sir.

Q. And the cost of these permanent improvements from 1898 to 1906, was the difference between this sum of $942,000 that you paid for that part of the property of the Great Southern Telephone & Telegraph Company in Louisiana, is that correct?

A. What we spent on the plant after we purchased it, is charged to construction.

Q. Which makes the total sum, including the original purchase, the sum of $4,711,000, is that correct?

A. That is correct.

Q. And this property was improved from the sums derived by the issue of additional capital stock, the surplus and the reserves?

A. And the bonds and borrowed money.

Q. Accumulated and issued from time to time, is that correct?

A. Yes sir.

140 Q. What is the present as compared with the original cost of construction?

A. The $4,711,942 represents the original cost of the property.

Q. What is the present cost of construction as compared to the original—what you paid for it?

A. Do you mean does it cost more now to build a mile of line than when we constructed it?

Q. Yes?

A. It is more expensive, because the engineering features are very much changed, and the price of material is higher.

Redirect examination.

By Mr. GRANBERY, for Plaintiff:

Q. Mr. Smith, state the extent of the development of the company's business in the State of Louisiana when this company first commenced to operate under its purchase from the Great Southern Telephone and Telegraph Company, in Louisiana I mean?

A. There were in operation ten exchanges having a total of 2405 subscribers; the New Orleans exchange had only 1768 subscribers; there were 211 miles of grounded toll lines.

Q. What was the state of development on June 30, 1906, of the company there?

A. 49 exchanges; 25,839 subscribers; 2,225-27/100 miles
141 of poles, carrying 15,988 miles of iron wire, and 11,299.82 miles of copper wire.

Q. As auditor of the company, are you able to state whether or not the management has practiced economy in the expenditure of money in the construction, maintenance and operation of its properties in the state of Louisiana?

A. I can say positively that this is done with as strict supervision as I believe it is possible to give it.

Q. What is the largest salary paid by the company to any of its officers or employés?

A. Eighteen thousand dollars per year.

Q. Is that the president?

A. Yes sir.

Q. What is the salary of the general manager?

A. Sixty-six hundred dollars a year.

Q. And of the treasurer?

A. Forty five hundred dollars a year.

Q. Of the auditor?

A. Thirty six hundred dollars a year.

Recross-examination.

By Mr. MCCALEB, for Defendants:

Q. In this construction account, amount expended for new construction, you include new switch-boards that are put in where old switch-boards are taken out?

A. The cost of a new switch-board is included in construction, the original cost of the old switch-board is taken out of con-
142 struction. In other words, the cost of the new switch-board, less the original cost of the old switch-board, is charged to capital account.

Q. Where you take out poles and substitute new poles, is that charged and how?

A. The difference, if there is any, to the capital account.

Q. Where you take out iron wires and put in copper wires, how do you charge that?

A. The difference to capital account; that is the difference between the cost of the copper and the original cost of the iron, to capital account.

Q. By capital account you mean the capital, surplus and reserve?

A. I mean construction.

Redirect examination.

By Mr. GRANBERY, for Plaintiff:

Q. Do you mean there, re-construction or do you mean new construction?

A. New construction.

Q. Then everything that goes into new construction is charged to capital account?

143 A. We consider that capital can be used for the cost.

Further this deponent saith not.

(Signed) H. BLAIR SMITH.

It is agreed that the exhibits filed and caled for in this deposition, shall not be attached direct to this deposition, but will be filed separately and unattached hereto.

144 JAMES E. CALDWELL, the next witness, being called and first duly sworn, deposed as follows:

Direct examination.

By Mr. GRANBERY, for Plaintiff:

Q. State your name, age, residence and occupation?

A. James E. Caldwell, age fifty two, residence Nashville, Tennessee, and occupation, telephone business.

Q. You are the President of the Cumberand Telephone and Telegraph Company?

A. I am.

Q. How long have you been its president?

A. Since 1890.

Q. Were you connected with it prior to that time?

A. I was, as a director.

Q. Were you also a member of the Executive Committee?

A. Yes sir, I was a member of the Executive Committee and a director.

Q. When were you first connected witl the company?

A. About 1885.

Q. When was the company organized?

A. In 1883.

Q. Please state the outstanding capital stock of the company on January 1st, 1898?

A. $1,695,700.

145 Q. I will ask you to state whether or not that capitalization represented actual investment in the business and whether or not there was included any fetitious valuation or over-capitalization?

A. There was not; it represented actual value.

Q. The auditor, Mr. Smith, has stated the various increases in the capital account from that time to June 30, 1906. Please state whether or not each of those several increases represented actual capital put into the company and whether or not they were free from any over-capitalization or issued for any other purpose than actual money to the company?

A. Each and every one represents actual cash, one hundred cents on the dollar, with the exception of one. One of them represented the purchase of property; it represented the purchase of the entire telephone property owned by the Bell interests in the State of Louisiana and Mississippi, which was taken over on the basis of fifty cents on the dollar of its cost. In other words, the capital that was issued by this company for that property was issued at fifty cents on the dollar of the cost value of the property of that company; all the other issues represented actual cash money paid in, one hundred cents on the dollar.

Q. There has been an issue of stock since June 30, 1906, as of February 1, 1907. State whether or not that was for actual money?

146 A. It was for actual cash money, one hundred cents on the dollar, for each share.

Q. The matters you have spoken of with respect to the capitalization of the company, is that upon your personal knowledge, or upon information?

A. It is upon personal and actual knowledge.

Q. Please state whether or not the purchase by the plaintiff company of the properties of the Great Southern Telephone and Telegraph Company, was made as a good trade on behalf of this Company?

A. It was considered a good bargain, and time demonstrated that it was.

Q. Was that the reason that the purchase was made?

A. Entirely and solely for that reason.

Q. So that the capitalization of the company, which is now twenty millions in round numbers, is entirely free from any over-capitalization or water or fictitious values of any kind?

A. Absolutely and beyond a question.

Q. The company has outstanding bonds and debentures to the extent of a little in excess of a million dollars. State whether or not the company received a like amount of money for those bonds?

A. It did, a full one hundred cents on the dollar; some of those bonds actually brought premiums.

147 Q. The company in its annual statement to its stockholders for its business closing December 31st, 1906, shows a surplus fund. State when and how did that surplus occur, how it was created?

A. That was the surplus represented by the net earnings of the company since its organization over and above the dividends that were paid.

Q. State whether or not the business of the company has been conducted under and along economical lines, and what efforts the managers have made in this direction, during the time you have been president of it?

A. The business has been conducted by men who had their own cash money in it, and they have endeavored to the extent of their ability, to conduct it in as economical a manner as it would be possible for anyone to conduct his own private affairs; that has been its policy and it has been conducted along those lines and under those conditions ever since I have known anything about it. In other words, those who had the direction of its affairs had their own cash money involved in the business, and therefore as I say, had every incentive, and practiced every diligence it was possible for men to practice, in the economical administration of its affairs.

Q. I should like for you to state, in a general way, the method by which a telephone property has to be financed from year to year, and the peculiarities of the business in that respect, if there are any?

A. It must be steadily borne in mind that every new customer has to have capital employed for his special accommodation;
148 to raise that capital, therefore, will have to be continuous, not only one day or one year, but to be continued as long as the business shows any growth, as long as there are new customers to be reached and served, there has to be provided new capital. Therefore, the financing for one year has to be done with reference to the necessities for years to come. If bonds were put out, quite in the nature of things, they would get in the way of and hamper subsequent issues, so that the successful and the only practical way we have found or that has been found in fact if any success has been considered, was through the issuance of new stock. That stock, with this company, has been issued from time to time to meet its growth and it has been sold for actual money and nothing short of one hundred cents on the dollar. I may say that the only exception to that which has been practiced by this company was in one instance when its stock would not sell for a hundred cents on the dollar, but was selling in the open market at from sixty to seventy cents, and we could not sell stock and we did then put out an issue of bonds. After that experience, the markets adjusted themselves in such a way it was possible for stock to be sold at par, and since that time it has been sold at par, and no further bonds were issued or attempted to be issued.

Q. Has the telephone business of the country, as a whole, been prosperous?

149 A. It has not; on the contrary it has proven to be a very precarious business and there have been numberless failures, not only small ones but large ones. And taken as a business at large, it has not and can not be counted as being a success or complete success.

Q. Is it, or not, an extra hazardous business?

A. It has been proven to be a very hazardous business.

Q. What are the difficulties encountered, if any, in raising new capital from time to time on which to extend and develop the business and what were the causes of this trouble, if any were encountered?

A. A lack of confidence upon the part of the moneyed public in the business, in the belief that the business could be conducted as a profitable business; the disbelief that the conditions were such as to make it a success and profitable business.

Q. Are the appliances and plants and structures of a telephone company of a stable or unstable character?

A. In the very nature of the business it uses very perishable, and I may say, flimsy property, or in other words, property that is very easily damaged and that deteriorates very rapidly. In addition to that, it employs and has had to employ, appliances to develop the art, that were more or less experimental, that have been superceded and have had to be superceded by better appliances at frequent intervals, so that apparatus, if it has not been worn out,
150 has been superceded by reason of its being obsolete. All of those things have contributed towards making it still a precarious and uncertain business.

Q. Has the development of the telephone art progressed to a point where now the various kinds of apparatus used is stable and standardized?

A. I think not. On the contrary, I think that the future has in store as radical and revolutionary problems as it has had in the past. In other words, the operating problem is a very serious problem, very intricate and growing more so continuously.

Q. State whether there is any difference between the cost of conducting the business in the last few years, compared with former years?

A. The cost, per individual subscriber and the cost per individual message has increased considerably. One plain, well-known and easily understood reason is this; that a very few years ago only one wire was employed to serve a customer or carry a message, whereas now it is universal, or almost universal, that two are employed, and have to be employed. The public requirement is more exacting than it was; there is a more important business being handled by telephone than there was in former years, and to meet these requirements, constantly calls for a greater expense.

Q. What about the cost of material?

A. The cost of material, of the many items entering into
151 the structure, especially that of copper, is double; all metal is considerably increased; lead is quite double, and lead and copper enter largely into the construction. Poles are fully double, so that, without an exception, every item of material that enters into it, is anywhere from fifty to a hundred per cent. increased over what it was a very few years ago.

Q. State whether or not in your opinion, the subscribers of this company, especially in the State of Louisiana, receive more for what they pay now, than in former years?

A. They must receive, and do receive, quite easily twice as much as they did, for the reason that they have so many more possibilities; the development of the business in the state has been considerably doubled, it is three or four times what it was a few years ago, so that each and every customer has facilities furnished of an indefinitely greater character than what he had ten years ago, or even five years ago.

Q. Do the records of the company reflect this increase of use by the patrons in the State of Louisiana?

A. Yes sir, upon the actual records that is shown; seven or eight years ago, there was certainly not more than two hundred miles of toll lines of every description in the State of Louisiana, and that two hundred miles was represented by a property of flimsy and indifferent character, whereas today, that same kind of property is

152 represented by several thousand miles of pole routes, and many thousand miles of service lines. The exchanges themselves have been increased from a matter of ten or a dozen, where it must be all of four or five times that many now. The number of subscribers connected with each exchange has increased in the same proportion. In the City of New Orleans alone seven or eight years ago there were something like two thousand subscribers whereas today it is thirteen thousand and over. That same proportion will be found throughout the various exchanges in the State.

Q. Are the patrons of the company, speaking especially with reference to the State of Louisiana, more exacting with reference to the toll service in later years than formerly.

A. Very much more so, for the reason as I have stated before, they are dependent upon it in their important affairs, and they are using it in their business in a way they did not do, or depend upon it, in former years, and as they are using it in more important affairs, they are more exacting.

Q. Does this entail any additional expense upon the company in operating and maintaining toll lines?

A. It does in both. It raises the expense of maintenance, for the greater the necessity, the greater expense that must be incurred to keep men and material ready to meet promptly, repairs and operators in the same proportion, and in the same way, for immediate handling of business.

153 Q. The company has paid dividends of seven per cent. for the last seven years; is that correct?

A. About that, yes sir.

Q. Prior to that, were any paid?

A. Yes sir, prior to that it was six, and five and four. In the earlier years it paid four per cent., then grew up to five and then to six, and then up to seven, where it now is.

Q. State whether or not seven per cent. is regarded as a fair return upon the capital invested in the telephone business?

A. Seven per cent. is not considered by any means an unfair return. It is not as much as a great many people feel such a business ought to pay, and anything less than that is not counted satisfactory to any class of investors or stockholders with whom I am ac-

quainted, considering the precarious nature of the business, its vicissitudes and uncertainties and anything less than that return is not counted as satisfactory to any class of investors that I know of and by a great many is not considered at all sufficient.

Q. Suppose a telephone company should cease to do business, what would be the salvage or percentage of the original cost that could be saved by the company?

A. It would not equal twenty five per cent.

Q. Then do I understand you are of the opinion a tele-
154 phone company in order to maintain itself, must continue to operate its property?

A. If it does not make a profit in operating it, it has no value at all, that is the actual facts about it.

Q. A cessation of operations would result in a loss of seventy-five per cent. of the actual cost?

A. It would easily amount to that, and practically an annihilation of it, as the convertible value of it is infinitesmal and insignificant.

Q. Then, the patronage of the company and its business is an important element in its progress?

A. It is its best asset.

Q. What is the effect of any interference with that patronage?

A. It diminishes the revenues and the profits and therefore, the value.

Q. State whether or not the rates for toll service in the State of Louisiana differ from the toll rates in the remainder of the territory in which the plaintiff company operates?

A. They are the same; made up on the same basis.

Q. State whether there is any difference in the cost of construction and maintenance in the State of Louisiana as compared with the remainder of the company's operations?

A. There is a difference and it is considerably more in
155 Louisiana, for the reason that there are no highways in the state; it has to be built either on private property or railroad rights of way. The soil is, in the main, marshy, and soft and requires heavy guying, anchoring, etc., to keep it up; it is very expensive to get the material to the place where it is to be erected, and after it is up, the nature of the climate and soil operate to rapidly deteriorate and destroy the property. I may say, as an illustration, in the southern part of the state, leading west from New Orleans and following the banks of the Mississippi River, north and the main line of the Illinois Central Railroad, going north, the material had to be carried to the location practically on the shoulders of the men, to a very great extent, actually carried in by hand; whereas, in other parts of our territory, it is carried in wagons, by teams, on hard and firm roads. Vegetation in that soil grows rank as it does in the tropics and trimming and keeping the lines clear of moss and tropical growth, entails an enormous expense and a continuous expense; the storms that seem to pass over that country continuously, wrecking the lines at all times of the year, blowing down of trees and

blowing down of structures, more so than in any other part of the territory in which we operate, makes it very expensive.

Q. These unusual conditions you have mentioned as pertaining to the State of Louisiana, are they encountered in any other part of the territory in which the company operates?

156 A. Not in the matter of soil and roads I have mentioned or the tropical growth; we meet with no such conditions as those anywhere else.

Q. Are there any other unusual conditions in the remainder of the territory that are encountered that are not encountered there?

A. There are not, for we have sleet storms there and we have had more there in the last five years than in any other part of the territory.

Q. So, I understand you to say, there are no disadvantages in the other states that off-set any of the disadvantages met with in the State of Louisiana?

A. There are not. On the contrary, take it here in Tennessee and Kentucky; we have fine, hard, metal roads, running in every direction; conditions of living are simpler, you can find more people that offer their services to labor, and the matter of getting material to locations is infinitely cheaper and simpler.

Q. Does the elements entail an unusual expense in Louisiana not encountered in other parts of the country?

A. They do; as I have described before, the storms from the Gulf of Mexico, the atmosphere is very moist, which corrodes and rusts out metal and the very wiring of the switch-boards and we have to employ artificial heat to keep them dry and keep them from being eaten up, and nowhere else we operate do we encounter this.

157 Q. Is it practical to separate expenses of maintenance and operating exchanges from the toll lines?

A. It is not; it can not practically be done.

Q. State whether or not the toll line business or the exchange business, separated from each other, would be profitable on the present rates?

A. I would not regard either one of them by itself as having any special value of profit; they could not be profitably conducted when separated.

Q. Operating the two together, it is a saving in the expense of operating and maintenance?

A. It is; there is an economy served in operating the two together.

Q. Will you state generally, why that is true?

A. It grows out of this circumstance, that a great many of the subscribers that are in the suburbs of the towns and cities are handled on the poles employed for the toll lines; the toll lines, in return, use the poles erected for exchange purposes, and this is done universally in our territory; the men that are employed to repair exchange lines, can be employed to repair toll lines and wires; the managers and central office equipment can be used for the dual purpose, so, it runs practically throughout the operation of the entire business; they are one and inseparable in the advantages that are to be derived.

Q. State whether or not the management of a telephone property can, with prudence, return to its stockholders its entire net
158 receipts year by year?

A. Why no, it is absolutely out of the question.

Q. In other words, you must earn a larger per cent. on your capital than you pay to your stockholders?

A. If it is not done, it would certainly encounter a short life and sure disaster.

Q. State whether or not that business principle is recognized in all lines of business, by men of affairs?

A. I know of no exception to the rule.

Q. State whether or not the company, on its present earnings, could with any degree of safety pay a larger dividend to its stockholders than seven per cent.?

A. It could not; on the contrary it is my belief it is hardly warranted in continuing the seven per cent. dividend on present conditions. Indeed, I feel it has to do better than it is now, in order to continue to pay seven per cent., that it will have to get a better return out of its business than it is now doing to pay that rate of dividend.

Q. Are the expenses of conducting the business as economical as they can be made?

A. They are, to the very best of my knowledge and belief and ability.

Q. Then, any better showing must come from an increase in rates?

A. Any better showing has to come from its rates and revenues.

Q. Please state whether or not the net receipts from con-
159 ducting business in the State of Louisiana are as great in proportion to the capital invested as the net receipts in the remainder of the territory of the company, in your opinion?

A. I don't think they are.

Q. Will you give your reasons for this belief?

A. For the reason that the cost of equipping a subscriber, the cost of constructing toll lines, is greater there than elsewhere, and the expense of conducting the business is likewise greater, and as we are operating under the same schedule of toll rates and exchange rates, quite in the nature of things therefore, the net result is not as large as it is in other parts of the territory.

Q. Taking the business in Louisiana on the present schedule of rates, would the company be justified in paying seven per cent. dividends if the toll rates should be reduced as contemplated by the Railroad Commission in its order?

A. It would not, unquestionably, for, as I have said before, if they, if this present rate is to be continued, we have to do better than we are, instead of worse; that is, we have to get better rates instead of less rates. I might say, that I have, only in the last few days, received offers for sale of telephone properties in Louisiana, at less than fifty cents on the dollar of the cost, which I declined to consider.

160 Q. In the deposition of Mr. Smith, the auditor of this company, it was developed that the company charged seven and

one half per cent. per annum on the original cost of the plant, for depreciation. I will ask you to state why that is done and explain fully what is meant by depreciation and how it is figured?

A. Depreciation is a principle that is as old as the industries of men, and grows out of the fact that property of all kinds, begins to decay from the very beginning of its life; in the early stages of it, it does not show that decay and rot and may not show very much of it for several years or a good many years even, but it is going on, is latent but is developing year by year, so, to meet its final death and destruction, a part of the income must be set aside every year. Enough money must be set aside every year to represent a percentage, that percentage of decay which is silently but steadily going on, so as to be able to meet it when it has to be renewed. If that is not done, then, quite in the nature of things, a profit would be shown that was fictitious for one year, or the early years even, would show a profit when the renewal period would come, and the whole property would be gone and nothing to show for it, and no assets retained to off-set it. This depreciation fund is held in the shape of a reserve and counted as a liability and carried in the accounts as a liability,
a debt which will have to be met and provided for in the
161 future.

Q. Is it, or not, universally true, that this depreciation fund must come out of the gross earnings?

A. It must, unquestionably, and must be treated as a part of the expenses of conducting the business.

Q. Any company, then, that does not set aside a depreciation fund out of its gross earnings, is in liquidation?

A. It is incurring a liability against itself which will materalize and mature as any other debt it makes and if it does not recognize this and provide for it, in its very nature, it will be insolvent.

Q. Explain the difference between maintenance and depreciation?

A. Maintenance represents the expense necessary to be incurred from time to time in repairing breaks and taking care of break downs and repairs that have to be met from day to day to keep the service up and going. Depreciation represents the silent decay and rot which is going on continuously, and develops at the final rotting down of the plant.

Q. Mr. Caldwell switch-boards if one of the expenses and expensive pieces of apparatus that the telephone company uses, isn't it?

A. It is one of the heavy items in the business.

Q. I wish you would illustrate depreciation and maintenance with reference to that process upon a switch-board?

162 A. It operates on a switch board in two ways; the actual wearing of the parts constantly employed in making connections, the corrosion and eating up of the metal wires and metal parts that enter into it, and in addition, and to a very great extent is the evolution which is constantly going on, a switch-board that is designed we may say to accommodate a certain number of subscribers, if the subscribers increase, and experience has been that they have done so, to a point where that board is inadequate, it has to be set aside

and taken out altogether, and a new and different type employed to meet the requirements. This is not confined to small exchanges but is true of the very largest and what that future of the switch-board question is to be, all the engineers and students of the subject are well nigh confounded. In other words, what to do to switch an excess of ten thousand subscribers was a great problem and that was met by branch boards; what is to be done now, when cities have to be provided with fifty to a hundred thousand subscribers instead of ten thousand, is, I say, a tremendous problem and the present apparatus that is being employed, will be likely inadequate and unsuited for the purpose and will have to be discarded, whether worn out or rotted or not, it is useless and valueless and the ingenuity of man will have to devise something else to meet those requirements, and is at work on the problem now.

163 Q. Now, the replacing of that switch-board, as I understand is depreciation?

A. It is.

Q. The current repairs on it, such as may be made from day to day, or week to week, is maintenance?

A. That is right.

Q. In the statement filed by the auditor appears the items of maintenance, depreciation, reconstruction and capital account. State whether the item of expense of maintaining a telephone property is greater or less than most any other kinds of properties used by public service companies?

A. It is, for the reason that it is of a delicate nature. As I said before, using really flimsy material, it is of a perishable nature, easily destroyed entirely.

Q. What effect would a reduction in the toll line charges in Louisiana, have upon the remainder of the territory of the company?

A. It would undoubtedly bring them all to the same level; it is all worked as one system, all worked as one concern, and these states bordering on it, bordering on each other, with the commercial influences overlapping so it works from one right into the other, and therefore the system of rates paid in Louisiana, would be demanded as correct in Tennessee, Mississippi, Kentucky, Illinois, Indiana and there could be no other possible result.

164 Q. Could the company justify a reduction of toll line rates in Louisiana in the remainder of its territory?

A. It could not; it could not sustain itself in any of its other territory on a higher rate than it would be charging in Louisiana.

Q. State whether or not the toll line rates in the territory of the plaintiff company are above or below or on a parity with the toll line rates generally charged by properly conducted telephone companies in America?

A. The toll line rates in Louisiana are on a parity with those charged by the Cumberland Telephone and Telegraph Company all over the territory and the Cumberland Telephone and Telegraph Company's toll line rates are somewhat less than those of the other established companies in the country, so that the rates in Louisiana

are on a somewhat lower basis than the toll line rates are generally throughout the United States.

Q. You refer of course, to the rates charged by the company, and not the rates that have been fixed by the Railroad Commission?

A. I am speaking of the schedule of rates charged by the company and which have been used by it for some years, that schedule of rates which the Cumberland Telephone and Telegraph Company itself voluntarily made and put out, are somewhat less than the rates charged by the established companies throughout the United States.

165 Q. Do you know, or have you any information as to why the rates were proposed to be reduced in the State of Louisiana?

A. By the Commission?

Q. Yes?

A. I have not the slightest knowledge why it was done.

Q. Do you know of any condition in the affairs of the company or any situation in the State of Louisiana relating to the telephone business, that would call for a reduction?

A. I can not imagine. Certainly there was no good business reason that called for it, and there was no consideration of justice to the business. The toll rates generally throughout the United States, by standard companies, is based on three-fifths of a cent a mile, and that means actual toll line mileage, measured in the way in which the line runs, whereas the schedule of the Cumberland Telephone and Telegraph Company is predicated on air line measurement, as a general proposition; and one half of a cent a mile, instead of three-fifths of a cent a mile. That is the difference between the schedule employed by the Cumberland Telephone and Telegraph Company and the schedules employed by other standard companies.

Q. Did the Commissioners give you, or the company's representatives, so far as you know, any fact or information upon which the reduction in rates was based?

166 A. There was no information whatever given, and no facts or figures presented that I have ever heard of or seen, that they claimed to warrant or justify a reduction in rates.

Q. I wish you would state what would be the results upon the public and the patrons of the company if the company should fail to raise sufficient money from year to year, with which to continue the development of the business?

A. There has already been a sufficient effect to cause the company to be in position to be unable to do any very considerable extension of its business or meeting the demands that are constantly coming upon it for additional service and to accommodate new customers, and if it should reach the point where it could not pay the present return on the money invested, its credit would be destroyed and its ability to raise new money would also be destroyed and unless it can raise new money, outside of its business, from time to time, it would be utterly powerless to meet the public requirements and its usefulness as a concern would be destroyed, as well as its value to its stock-

holders. As I say, enough has already been done to impair its usefulness considerably; it can not raise the money in anything like the quantities it ought to do, and otherwise would be able to do if left somewhat free to handle its business successfully, and in the midst of it, there is a pressure and complaint throughout Louisiana in every direction, because of its inability to meet the public requirements as they desire it and as the company itself would like
167 to do.

Q. Is there any pressure upon the management of this company to extend its toll line business in the State of Louisiana?

A. There is a very great pressure in every direction for new routes and additional facilities and additional service.

Q. A telephone property, as I understand, never becomes a completed property?

A. It has not up to the present time been any hing like it. Indeed you may say it is right in the midst of its development and growth. The whole northern part of Louisiana is practically undeveloped; there are hundreds of miles of railroads that are not paralleled by telephone lines; there are hundreds of miles of navigable water courses that are not, and the present routes are by no means sufficiently equipped with circuits, to meet the requirements as it should do, and the company is unable to do this, because of the fact that the credit of the company in the money markets of the world is not sufficiently attractive to raise the money.

Q. Please explain the policy pursued by the company with respect to these new issues of stock in this respect. Does the company issue the stock and then use the money put in by the stockholders, for development, or does it first develop and issue the stock against that development?

168 Q. It has been using its credit in the open market, borrowing money whenever it could on short time paper until that debt would grow to a certain size, when it would fund it into an issue of stock. Or, in other words, it would make an issue of stock to raise the money to pay off these floating debts. This was more economical, because there would be at no time any idle money upon which interest or dividends would have to be paid or made, but by borrowing it from time to time as we were expending it, the money was made to earn its return as fast as it was employed.

Q. So that when each new issue of stock was put out, the property represented by it was already on a dividend paying or earning basis?

A. It was then already on an earning basis.

Q. Now, this issue of $3,362,500 of stock put out February 1st, 1907, was that for money to use in the future, or to pay the loans incurred by the company in the past?

A. That was for paying up loans and debts that had already been incurred.

Q. State whether or not there has been, in the last few months, or the last nine months, any cessation of development in the State of Louisiana by the plaintiff company?

A. There has been a very well nigh complete cessation.

Q. What has brought that about?

169 A. The action upon the part of the Commission to reduce these rates caused the directors of the company to be alarmed first, and as it filtered into the stockholders, they became more alarmed, thinking that if without any apparent reason or justification, the rates were to be arbitrarily reduced, that if that was to be the policy and the condition under which the business was to be conducted, quite in the nature of things, those who had the money at stake were alarmed, very much alarmed and very justly alarmed, and they certainly were not going to risk any more money under those conditions, until they knew better and more clearly what would be the outcome. It was not a matter of choice, it was a matter of necessity and they dared not do any different.

Q. As president of this company have you now, and have you had for many years, an intimate and accurate knowledge of the affairs of this company?

A. I have made it my sole study and business for seventeen years. I am doing nothing else and devoting my whole time and ability to it.

Q. State whether or not from that knowledge of the company's business, the toll line rates can be reduced in the State of Louisiana with safety to the investment, or with safety to the patrons in that state?

A. They can not, absolutely and without a question; but,

170 on the contrary, they have to be improved, if any vitality or permanent prosperity is to be gotten out of it.

Q. Is it possible for the management of this property to continue the development of the business in the State of Louisiana, without the earnings of the company from existing development being satisfactory?

A. There is not any other way under Heaven that it can be done.

Q. Is there anything else you desire to state in connection with this litigation?

A. Only to reiterate and make emphatic what I have said just heretofore, that the rates in Louisiana, as they now exist outside of the ruling of the Commission, are as low as it is possible to talk about, and that unless rates as good, or better, than these, can be secured, the business in that state, as far as this company is concerned, is doomed and hopelessly lost.

Cross-examination.

My Mr. McCaleb, for Defendants:

Q. Would a loss in the net earnings of the company of say forty thousand dollars a year, affect the company's financial standing in any way?

A. If it involved a vital principle in the business, it would

171 Q. In what way?

A. If it involved the principle that forty thousand dollar

could be arbitrarily taken, then three hundred thousand dollars could be as easily taken, and then three millions as easily; therefore, it would put the money markets of the world, it would put the stockholders too on notice that that state of affairs was in existence and that it was useless to attempt to prosecute the business or conduct the business, in the face of that state of affairs.

Q. That is not my question. My question is, would a loss or a reduction in the net earnings of the company in Louisiana, of forty thousand dollars for one year, affect its business, its financial standing?

A. Yes. The business in Louisiana has got to go forward and meet its developments, or it will go backward. It can not go forward unless it has every cent of revenue it is now getting, and unless it is able to demonstrate that it is going to be permitted to have full latitude in its business, and that a loss of forty thousand dollars in its revenue now would be noticed and could not be ignored, that the conditions I have described could not be carried out and it would certainly be disastrous to it. A single loss of forty thousand dollars, as a damage suit, it could stand.

Q. Or a loss of forty thousand dollars in any other way, it could stand?

A. In other words, I can say, one specific loss of forty
172 thousand dollars would not bankrupt this company, but a loss of forty thousand dollars growing out of an arbitrary reduction of its rates, would impair its credit and would destroy its usefulness, for it is absolutely now too low. It is now receiving less return on its investment in Louisiana than prudence calls for and any further reduction of that would be disastrous to it.

Q. Now, in a case of a reduction of toll rates, would not the revenues increase, the business increase and therefore the revenues increase?

A. If the business should increase, you would have to increase your facilities for handling it and you would have to put up a corresponding increase in capital, so you would find yourself in this condition, if you had to increase the business, you would have to put in an increase of capital, and unless you could show there would be net earnings enough on it, there would be no incentive to put up the capital. In other words, the present structure is carrying its load, and if you increase that load, you have to increase the structure.

Q. Could not the telephone service today in Louisiana be doubled at the same expense?

A. It could not, not at all.

Q. Could it in any way be increased at the same expense?

A. Any perceptible increase in the toll line service in Louisiana, would be attended with the same percentage of expense, for the
173 reason, that the increase of the revenues will call for increased facilities in every direction, and an increase of operators, so that the expense would increase in the same proportion.

Q. Now, concerning the disadvantages for operating the plant

in Louisiana, which you have described in your direct examination. Is not all of this shown in the expense of maintenance account?

A. Part of it is, and part of it is depreciation.

Q. And is not the revenues derived from exchange and toll service in Louisiana, likewise shown in your revenue account?

A. Yes, they are all reflected in the respective accounts of the company.

Q. And these accounts reflect the advantages and disadvantages of the business as carried on in the State of Louisiana?

A. Yes sir.

Q. Now, isn't it a fact that the facilities at the exchanges would be the same in case toll line service was increased?

A. No sir, for the operating expenses would increase, they would of course, have to be increased.

Q. Would not all the patrons of the exchange service pay for the toll lines?

A. No, on the contrary, the local subscribers would be using their present facilities in a greater way, and the added expense would go right into that.

174 Q. Don't you know that there are telephone companies in this country that operate a toll line business and that show a profit?

A. Yes sir there is one company that I know of that does it. They show some profit in their business and it grows out of the fact that they charge higher rates than we do, and carry business outside of the telephone, into it; they get their best profit out of the telegraph service.

Q. What company do you allude to?

A. The American Telephone and Telegraph Company.

Q. Has the American Telephone and Telegraph Company not a toll line service going out from New Orleans?

A. No sir, they do not have any in Louisiana that I know of but their lines meet ours at the Louisiana line. I don't know that they have a foot of line in Louisiana; if they have, I do not know it. It is proper that I should state that that company which makes that profit, makes the *claim*, and I believe it is true, entirely out of their suburban business in the congested centers, like Chicago, Boston, Philadelphia and New York, where they handle the great bulk of the suburban business.

Redirect examination.

By Mr. GRANBERY, for Plaintiff:

175 Q. Now, Mr. Caldwell, would a reduction of thirty thousand dollars in the revenue from toll line business in Louisiana be all the loss the company would sustain, if the rates proposed by the Commission should be put into force?

A. Not by any means, for if the reduction was made there, it would go throughout the territory and would affect its toll line business entirely, and the same percentage of reduction would apply

throughout the entire territory it is operating in, and as the toll business of the company is, in round figures a million and a half dollars, the percentage would be calculated on that basis and not on the basis of the receipts in Louisiana alone.

Q. Would this corresponding reduction throughout the entire system, enable the company to continue its dividend of seven per cent.?

A. It would not, absolutely.

Q. Now, counsel has asked you if a reduction in the toll line business would not increase the business of the company, and you stated that it would involve a corresponding increase in expenses. I will ask you to state the general difference between the toll line business of a telephone company and a telegraph company?

A. The telegraph company employes one wire and it can send several messages at the same time over that one wire; it employs its own operators to send the message who consult each other's time and convenience in the handling of it; the telephone company has to employ two wires, the sender of the message is his own operator as our operator simply fashions up the facilities for him, and the customer sends his own message and becomes, therefor, his own operator, hence his convenience and time must be consulted. We have to be ready in other words with the operators and the appliances to suit the convenience of the customer, whereas in the telegraph business, it is just the other way; the customer brings in his message, and when it suits the convenience of the company to employ its operators and its apparatus to send it, they send the message.

176

Q. State whether or not it is a fact that if the plaintiff company could take the messages received by it during the twenty four hours and send them at such time as its convenience dictated and required, they could handle more business at a greater percentage of profit?

A. They could carry a greater per cent. of business at the same expense. In other words, it could handle it more economically than they are now doing, but the measure of the capacity of the line is represented by what is known as the peak of the load, for instance, the busiest hours of the day represents the capacity. If we have not the capacity to carry the full load at the busiest hour, quite in the nature of things, we have to get it up to that or we are not meeting the requirements, for the customers are going to consult their own convenience and pleasure whenever they wish to send their messages, and if we can not take them at that time, they will not send them at all.

177

Q. As I understand, there are certain times during the day and night, when the wires are used to the full capacity on the present rates, in the State of Louisiana?

A. They are. Indeed the study and the estimates are that there should already be added facilities to handle the business that is in existence today.

Q. Then, any increase of business would necessarily require increased facilities and the expenditure of additional capital?

A. Yes, and an increase of operating forces as well.

Further this deponent saith not.

(Signed) JAMES E. CALDWELL.

178 STATE OF TENNESSEE, *County of Davidson:*

The foregoing depositions of H. Blair Smith and James E. Caldwell, were taken as stated in the caption hereof, and as indicated therein, subject to agreement waiving all formalities as to caption and certificate, and I certify that I am a Notary Public in and for the County of Davidson, State of Tennessee, duly elected, qualified and acting as such, and that the witnesses were duly sworn according to law, that they read over their depositions and signed there names thereto, as above indicated.

Witness my hand and official seal on this the 11th day of May, A. D. 1907.

[Seal Buford Duke, Notary Public, Davidson Co., Tenn.]

(Signed) BUFORD DUKE,
Notary Public and Stenographer.

My commission expires October 10, 1909.

179 *Exhibits Offered and Filed July* 30, 1907 *in the Case of* —.

U. S. Circuit Court, Eastern District of La.

No. 66.

THE CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

EXHIBIT "B."

Copy.

I–31— JUNE 11, 1907.

Mr. E. L. Powell, Dist. Sup't Cumberland Tel. & Tel. Co., New Orleans, La.

DEAR SIR: With reference to the petition of the Cumberland Tel. & Tel. Co., which has been filed with the Commission, asking to be allowed to advance the night and Sunday rate for toll conversations, I have now to advise you that the Commission has considered this petition and has concluded that it would be useless to take up this petition at this time. The reason for this decision is that your Company has filed suit against the Railroad Commission of Louisiana in the Federal Courts to have set aside this order reducing the toll rates in the State of Louisiana, in which order the rates for night and Sunday messages are also established.

The entire subject is now in litigation and the Commission could not consistently enter any orders tending to abrogate fixing its order reducing toll rates in the State of Louisiana, now in litigation. For this reason no hearing will be assigned on the Company's petition for an advance in night and Sunday rates for toll conversations, at this time.

Respectfully, —— ——, *Secretary.*

BH.

180 D–1.

Railroad Commission of Louisiana.

Order No. 488.

No. 430.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, *Ex Parte.*

Telephone Toll Rates.

Heard April 8, 1904.

The petition of plaintiffs asks that the Commission authorize a standard system of charges for toll line service between points in Louisiana. The system proposed, briefly is as follows:

Each parish is designated as a "square," and every parish site is taken as its center, or rate basing point. Toll rates between telephone stations in the same parish, or between stations in adjoining parishes are to be determined by actual measurements from station to station up to 20 miles. Toll rates between all stations in the same parish, and all stations in another parish not adjacent to or bordering on the parish in which the first station is located, are to be determined by the air line distance between the two parish sites, or "square centers." Between points in the same parish, or between points in bordering parishes, the rates are to be based on the shortest toll line mileage up to twenty miles. Where the distance between such stations exceeds twenty miles, then the air line schedule shall become effective.

The commission now has no systematic method of figuring or checking toll line rates, and believes the system proposed is a simple and satisfactory plan, easily understood by the public and the employees of the company, and that its adoption will result in more uniform charges than exist at present. The changes which will result in present toll line rates are small, and while there will be some slight increases there will be as many or more reductions to offset them.

Believing the adoption of the "square" rate system for
181 figuring toll rates will be of benefit to the public, it is

Ordered, that—

1. For rates for long distance telephone conversations of three minutes' duration or less, from one mile to twenty miles, measure-

ments will be made according to pole line mileage, and the rates will be as follows:

From one to seven miles, inclusive..... 10 cents.
Over seven to fifteen miles, inclusive..... 15 cents.
Over fifteen to twenty miles, inclusive..... 20 cents.

2. For rates for Long Distance telephone conversations of three minutes duration or less, between points in the same parish or adjoining parishes, over twenty miles polo line mileage apart, the measurements shall be made according to the air line distance, between stations. In all towns or cities where there are telephone exchanges, said exchanges shall be considered stations.

3. For rates for Long Distance conversations of three minutes duration or less, between points in any parish to points in any other parish, not bounding same, measurements shall be made according to air line distance from parish site to parish site.

Rates based upon air line measurements shall be computed as follows:

One mile to forty miles, inclusive..... 25 cents.
Over forty miles to fifty miles, inclusive..... 30 cents.
Over fifty miles to sixty miles, inclusive..... 35 cents.
Over sixty miles to seventy miles, inclusive..... 40 cents.
Over seventy miles to eighty miles, inclusive..... 45 cents.
Over eighty miles to 100 miles, inclusive..... 50 cents.
Over 100 miles to 110 miles, inclusive..... 55 cents.

For one hundred miles and over the rate is one half cent per mile, air line measurement; the rate increasing five cents for every ten miles or fraction thereof, for example:

If the distance is 102 miles, the rate is 55 cents.

For conversations longer than three minutes, the charges for each extra minute shall not exceed ⅓ of the three minute rate.

4. Stations located in the extreme southern part of Plaquemine Parish on what is known as the Port Eads Line will continue to use rates already authorized. For convenience's sake, these stations will each be given a Square number and the rates quoted to all other stations are to be in conformity with the rates between these stations and New Orleans, Louisiana.

182 5. Night conversation rates are in effect from 6 P. M. to 6 A. M.

Where the day rate is 10 cents the night rate will be 10 cents.
Where the day rate is 15 cents the night rate will be 15 cents.
Where the day rate is 20 cents the night rate will be 20 cents.
Where the day rate is 25 cents the night rate will be 20 cents.
Where the day rate is 30 cents the night rate will be 20 cents.
Where the day rate is 35 cents the night rate will be 20 cents.
Where the day rate is 40 cents the night rate will be 20 cents.
Where the day rate is 45 cents the night rate will be 25 cents.
Where the day rate is 50 cents the night rate will be 25 cents.

Where the day rate is 55 cents the night rate will be 30 cents.

Where the day rate is 60 cents the night rate will be 30 cents.

When the day rate is 50 cents or more, the night rate is one-half the day rate. When the half rate does not end in 0 or 5, the amount is carried up to the next 0 or 5, for example:

When the day rate is 55 cents, the night rate is 30 cents.

6. Sunday rates are the same as night rates.

7. The official map of the Railroad Commission of Louisiana is to be used as the standard map for measuring distances between square centers and all calculations for rates shall be based upon the Commission's map.

8. All rates or orders in conflict with the rates named in this order will be revoked when this order becomes effective.

Effective January 1, 1906.

By order of the Commission.

Baton Rouge, Louisiana, December 13, 1905.

C. L. DE FUENTES, *Chairman,*
W. L. FOSTER,
OVERTON CADE,
Commissioners.

[SEAL.]

(Signed) W. M. BARROW, *Secretary.*

185 *Petition*—D-2.

To the Honorable the Railroad Commission of Louisiana:

The petition of the Cumberland Telephone & Telegraph Company, with respect represents:

That prior to March 1898, the only long distance telephone business in this State was carried on by the Great Southern Telephone & Telegraph Company, which had in operation a few scattered long distance telephone lines in various portions of the State, and that its rates were based upon local conditions, and not upon any regular system of charges.

That in March 1898 your petitioner took over the business of the Great Southern Telephone & Telegraph Company, and that shortly afterwards the Railroad Commission of Louisiana, under the Constitution of 1898 began to control and regulate this business.

That at this time some of its rates for tolls were made according to air line mileage and some according to railroad mileage and some according to pole mileage and that as each new station was established complete calculation and schedules had to be figured out and made for each and every other station in the State and your Hon. Body applied to for rates.

That while the business of petitioner was small, this could be done, but now that it has been extended until it embraces all the important places In the State and numerous smaller and less important places, and as these stations are multiplying almost daily, it has become almost an impossible task to calculate these distances and make out the requisite rate sheets, and your petitioner now

finds itself in the same position as the Telegraph and Rail road lines of this Country, which were all forced to the adoption of the so called "Square system."

Your petitioner further shows that it has adopted this plan throughout the States of Illinois, Indiana, Kentucky Tennessee, and Mississippi, wherein it operates long distance toll lines, and that it gives entire satisfaction.

That under this system each Parish is a "Square" and every Parish site is taken as a centre. All rates from points within the same square or in adjoining and bounding Parishes are measured from station to station, and for messages to all points outside of adjoining and bounding Parishes the rates are measured from the square centre to square centre, and all measurements and rates should be as follows to-wit:—

From one to seven miles	pole	line	mileage			.10
From seven to Fifteen miles	"	"	"	"		.15
From fifteen to Twenty "	"	"	"	"		.20
From Twenty to Forty "	"	"	"	"		.25
From Forty to Fifty "	air	line	distance			.30
From Fifty to Sixty "	"	"	"			.35
From sixty to seventy "	"	"	"			.40
From Seventy to Eighty	"	"	"			.45
From Eighty to one Hundred	"	"	"			.50

One hundred miles and over ½ cent per mile.

184 Petitioner represents that the changes made in present rates by the adoption of this system would be small and immaterial and would result in equal and uniform rates for toll service over the whole State and these would be rates easily understood by the public and by the employees of petitioner.

That furthermore it would entirely obviate the necessity for calculating rates from every station to every other station in the State, and would make unnecessary the applying to this Commission for rates for every new station installed to every other station and this System would fit in with the System in vogue in the neighboring States.

Furthermore under this System the rate for every new station would be fixed automatically and the only requirement would be that the installation thereof should be reported for the information and records of the Commission.

Wherefore petitioner prays that your Honorable Body will be pleased to take the subject matter of this petition into consideration and grant a hearing thereon to your petitioner and such other persons as may desire to be heard thereon, and accordingly thereafter that you will be pleased to ordain and order that for the purpose of fixing long distance telephone toll rates that this State be divided into fifty nine (59) long Distance Telephone Squares, whereof each Parish shall constitute a square, and that every Parish site shall be taken as the square centre.

That all rates for messages from and to points within the same

square or from any square point to points in adjoining and bounding Parishes be measured from station to station, and for messages, to points outside of any square and not in the adjoining and bounding Parishes, the rates shall be measured from Square centre to Square centre, and that the rates shall be as follows:

From one to seven miles, pole line mileage	.10
From seven to fifteen " " " " "	.15
From fifteen to twenty " " " " "	.20
From twenty to forty " " " " "	.25
From forty to fifty Air line distance	.30
From fifty to sixty " " " " "	.35
From sixty to seventy " " " " "	.40
From seventy to eighty " " " " "	.45
From eighty to one hundred " " " " "	.50

One hundred miles and over one-half (½) cent per mile.

And petitioner as in duty bound will ever pray etc.

(Signed) CUMBERLAND TELEPHONE & TELEGRAPH CO.,
By CAGE BALDWIN & CRABITES, *Att'ys.*

185 **D-3.**

Filed Nov. 8, 1905. (Sig.) W. M. B.

1. To the Honorable the Railroad Commission of Louisiana:

2. The petition of the Cumberland Telephone & Telegraph Company with respect represents:

3. That prior to March 1898 the only Long Distance Telephone business in this State was carried on by the Great Southern Telephone & Telegraph Company, which had in operation a few scattered Lond Distance telephone lines in various portions of the State, and that its rates were based upon local conditions and not upon any regular system of charges.

4. That in March 1898, your petitioner took over the business of the Great Southern Telephone & Telegraph Company, and that shortly afterwards the Railroad Commission of Louisiana, under the Constitution of 1898, began to control and regulate this business.

5. That at this time some of its rates for tolls were made according to air line mileage, and some according to pole line mileage and some according to railroad mileage, and that as each new station was established complete calculations and schedules had to be figured out and made for each and every other station in the State, and your Honorable Body applied to for rates.

6. That while the business of the Petitioner was small this could be done but now that it has been extended until it embraces all the important places in the State and numerous smaller and less important places, and as these stations are multiplying almost daily it has become almost an impossible task to calculate these distances and make out the requisite rate sheets and your petitioner now

finds itself in the same position as the Telegraph and Railroad lines of this country which were all forced to the adoption of the so-called "Square System."

7. Your Petitioner further shows that it has adopted this plan throughout the States of Illinois, Indiana, Kentucky, Tennessee and Mississippi, wherein it operates Long Distance toll lines, and it has given entire satisfaction.

8. That under this system each Parish is a "Square" and every Parish site is taken as its centre Toll rates between stations in the same Parish or between stations in adjoining or bounding parishes are determined by measurements from station to station. Toll rates between all stations in one Parish and those in other parishes than the same, or adjoining Parishes are determined by the distance between the Square centres. Toll rates between stations in same Parish and between stations in adjoining parishes shall be determined by the shortest pole line mileage between them provided such pole line mileage does not exceed twenty miles. In case such does exceed twenty miles, then the air line schedule shall become effective. Rates shall be as follows for three-minutes conversation:

For one mile to seven miles, inclusive,	pole	line	mileage			.10
Over seven miles to fifteen miles	"	"	"	"		.15
Over fifteen miles to twenty	"	"	"	"		.20
From one mile to forty	"	Air	line	mileage		.25
Over forty miles to fifty	"	"	"	"		.30
Over fifty " to sixty	"	"	"	"		.35
Over sixty " to seventy	"	"	"	"		.40
Over seventy " to eighty	"	"	"	"		.45
Over eighty " to one hundred	"	"	"	"		.50
Over one-hundred to one hundred ten	"	"	"	"		.55

For one-hundred miles and over the rate is one-half cent per mile air line measurement; the rate increasing five cents for every ten miles or fraction thereof. For example.

If the distance is 102 miles, the rate is 55 cents.
If the distance is 111 " " " " 60 "

For conversations longer than three minutes the charges for each extra minute or fraction thereof shall not exceed ⅓ of the three minute rate.

9. Petitioner represents that the changes made in the present rates by the adoption of this system will be small and immaterial and would result in equal and uniform rates for toll service over the whole state, and these would be rates easily understood by the public and by the employees of the Petitioner.

186

10. That furthermore, it would entirely obviate the necessity for calculating rates from every station to every other station in the State, and would make unnecessary the applying to this Commission for rates for every new station installed to every other station and this system would fit in with the system in vogue in other states.

11. Furthermore, under this system the rate for every new station would be fixed automatically and the only requirement would be that the installation thereof should be reported for the information and records of the Commission.

12. Wherefore Petitioner prays that your Honorable Body will be pleased to take the subject matter of this Petition into consideration and grant a hearing thereon to your Petitioner and such other persons as may desire to be heard thereon and accordingly thereafter that you will be pleased to ordain and order for the purpose of fixing Long Distance telephone rates as follows, to-wit:

13. Each Parish shall constitute a "Square and every Parish site shall be the "Square Centre."

14. Toll rates between stations in the same Parish or between stations adjoining or bounding Parishes are determined by measurements from station to station. Toll rates between all stations in one Parish and those in other Parishes than the same or adjoining Parishes are determined by the distance between Square Centres. Toll rates between stations in the same Parish and between stations in adjoining parishes shall be determined by the shortest pole line mileage between them provided such pole line mileage does not exceed twenty miles. In case such does exceed twenty miles, then the air line schedule shall become effective.

Rates shall be as follows for three minutes conversation:

From one mile to seven miles inclusive pole line mileage	.10
Over seven miles to fifteen miles " " " "	.15
Over fifteen " to twenty " " " " "	.20
From one mile to forty " " Air line mileage	.25
Over forty miles to fifty " " " " "	.30
Over fifty " to sixty " " " " "	.35
Over sixty " to seventy " " " " "	.40
Over seventy " to eighty " " " " "	.45
Over eighty " to one hundred " " " " "	.50
Over one-hundred to one hundred ten " " " "	.55

For one-hundred miles and over the rate is one-half cent per mile air line measurement; the rate increasing five cents for every ten miles or fraction thereof for Example:

If the distance is 102 miles, the rate is 55 cents.
If the distance is 111 " " " " 60 "

For conversations longer than three minutes the charges for each extra minute or fraction thereof shall not exceed ⅓ of the three minute rate.

15. Stations located in the extreme Southern Part of Plaquemine Parish on what is known as the Port Eads Line will continue to use rates already authorized. For convenience's sake these stations will each be given a Square number and the rates quoted to all other stations are to be in conformity with the rates between these stations and New Orleans, Louisiana.

16. Night conversation rates are in effect from 6 P. M. to 6 A. M.

187

Where the day rate is 10 cents the night rate will be 10 cents.
Where " " " " 15 " " " " " " " 15 "
Where " " " " 20 " " " " " " " 20 "
Where " " " " 25 " " " " " " " 20 "
Where " " " " 30 " " " " " " " 20 "
Where " " " " 35 " " " " " " " 20 "
Where " " " " 40 " " " " " " " 20 "
Where " " " " 45 " " " " " " " 25 "
Where " " " " 50 " " " " " " " 25 "
Where " " " " 55 " " " " " " " 30 "
Where " " " " 60 " " " " " " " 30 "

When the day rate is 50 cents or more the night rate is one-half of the day rate. When the half rate does not end in 0 or 5, the amount is carried up to the next 0 or 5, For example:

When the day rate is 55 cents, the night rate is 30 cents.

17. Sunday rates are the same as night rates.

18. The official map of the Railroad Commission of Louisiana is to be used as the standard map for measuring distances between square centers and all calculations for rates shall be based upon the Commission map.

All rates or orders in conflict herewith are cancelled effective January first 1906.

By order

188 D-4.

Cumberland Telephone and Telegraph Co., Incorporated.

E. L. Powell, Superintendent.

W. N. Byers, Manager.

NEW ORLEANS, LA., *Aug. 1st,* 1906.

(Stamped:) (Railroad Commission of Louisiana—Filed Aug. 4—1906.)

The Honorable Railroad Commission of Louisiana, Baton Rouge, La.

DEAR SIRS: Enclosed please find rate sheets for new toll stations at Montgomery La., and Desare La., for your file. We understand from your previous letter that for such new stations as we open from time to time we will use, until further notice, authority #488.

Yours truly,

(Sig.) E. L. POWELL, *Sup't.*

Dict. E. L. P.—G. B.

189 D–5.

Recapitulation.

Comparative Statement of Earnings and Expenses of the Cumberland Telephone & Telegraph Company in the State of Louisiana as Shown by the Sworn Statements of the said Company to the Railroad Commission of Louisiana.

	Year ending June 30, 1904.	1905.	1906.
Capital Stock (entire line)	$11,595,350	$13,434,550	$15,909,250.00
Total gross earnings, Louisiana	780,277.19	1,026,109.10	1,228,691.31
Total expenses, Louisiana	567,073.90	605,109.78	760,316.63
Net earnings (Bad debts and depreciation not deducted)	213,203.29	420,999.32	468,374.68
"Depreciation" charged to "Operating expenses" in Louisiana	128,606.68	149,406.45	192,598.13
Net earnings, after deducting "Depreciation," State of Louisiana	84,597.61	271,592.87	275,776.55

190 *Grand Total "Expenses."*

Louisiana.

	Total expenses.	Including amount for "depreciation."
Year ending June 30, 1904	$711,561.44	$128,606.68
Year ending June 30, 1905	765,447.29	149,406.45
Year ending June 30, 1906	962,441.75	192,598.13

191 *Total Gross Earnings.*

Louisiana.

Year Ending June 30, 1904	$780,277.19
Year Ending June 30, 1905	1,026,109.10
Year Ending June 30, 1906	1,228,691.31

192 *Capital Stock.*

Year Ending June 30, 1904	$11,695,350.00
Year Ending June 30, 1905	13,434,550.00
Year Ending June 30, 1906	15,909,250.00

193 *Net Earnings.*

Louisiana.

		Included in operating expenses as "depreciation."
Year Ending June 30, 1904	$128,606.68	$128,606,68
Year Ending June 30, 1905	260,661.81	149,406.45
Year Ending June 30, 1906	266,249.56	192,598.13

194 *Statement of Value of Property in Louisiana as Shown in the Annual Sworn Reports of the Cumberland Telephone & Telegraph Company to the Railroad Commission of Louisiana for the Years Named.*

Value of Property in Louisiana.

	Years ending June 30, 1904.	1905.	1906.
Real estate	$79,250.00	$98,100.00	$102,600.00
All other property, including lines, wires, poles, equipment, etc.	662,259.70	1,161,051.35	1,579,404.70
Total	741,509.70	1,259,151.35	1,682,004.70

195 *Dividends Declared.*

Year Ending June 30, 1904	$783,979.00	Entire line.
Year Ending June 30, 1905	203,417.48	State of Louisiana.
Year Ending June 30, 1906	237,572.94	State of Louisiana.

196 EXHIBIT D-6.

Railroad Commission of Louisiana.

Order No. 552.

No. 642.

RAILROAD COMMISSION OF LOUISIANA
vs.
CUMBERLAND TELEPHONE & TELEGRAPH COMPANY.

Telephone Toll Rates.

Filed June 18, 1906. Heard August 6, 1906.

Upon numerous complaints being made to the Commission against the charges made by the Cumberland & Telephone & Telegraph Company in regard to the rates for long distance conversations between points in the State of Louisiana, the Commission instituted this proceeding, and accordingly a hearing was had at Baton Rouge, Louisiana, on August 6, 1906.

The Commission has fully investigated the charges made by the said Company, and believes they are unnecessarily high and excessive, and at the hearing the Company failed to show any good reason why the reduction proposed by the Commission shall not be made.

The Commission finds it necessary, however, to re-arrange the rates proposed by it in the order, and in accordance with its conclusions, it is hereby—

Ordered, that the following rates for long distance conversations between points in the State of Louisiana be and are hereby established:

For long distance telephone conversations between stations not over twenty miles apart, via the nearest pole line mileage, the measurements shall be made according to such pole line route and the following rates shall be charged:

From 1 to 10 miles, inclusive	10 cents.
Over 10 to 15 miles, inclusive	15 cents.
Over 15 to 20 miles, inclusive	20 cents.

When the distance between any two points exceed twenty miles, according to the shortest pole line route, the measurements between said stations shall be made according to the air line distance, and the charges for a three minute conversation between stations shall be:

From 1 to 10 miles	10 cents.
Over 10 to 15 miles	15 cents.
Over 15 to 40 miles	20 cents.
Over 40 to 50 miles	25 cents.
Over 50 to 60 miles	30 cents.
Over 60 to 70 miles	35 cents.

Over 70 to 80 miles..... 40 cents.
Over 80 to 100 miles..... 45 cents.
Over 100 miles..... ½ cent per mile.

In computing rates between points in different parishes which do not join each other, the parish site will be used as the basing point, and the rates between all points in such parishes shall be the same as the rate between the two county seats. Each parish shall be called a "Square" and given a number, for greater convenience in computing rates. The air line distance shall be used in computing such rates.

197 For distances over 100 miles, the actual rate shall be charged, except that whenever a rate does not end in "naught" or "five," the nearest figure so ending shall be the correct rate to be charged.

For conversations lasting longer than three minutes, the rate for each additional minute shall not exceed one-third of the rate for three minutes.

Port Eads Line.

On account of the extra hazardous conditions under which the "Port Eads Line" is maintained and operated, an exception is made to the rates applying to the stations "Fort St. Philip," "Neptune," "Quarantine," and "Port Eads or Pilot," and the charge for three minute conversations to these stations will be the rate to New Orleans, added to the rates authorized by this Commission to the stations named.

The rate for three minute conversations on Sundays, and between the hours of 6 p. m. and 6 a. m., daily, shall be,—

When the day rate is 10 cents, the night rate will be 10 cents.
When the day rate is 15 cents, the night rate will be 15 cents.
When the day rate is 20 cents, the night rate will be 20 cents.
When the day rate is 25 cents, the night rate will be 20 cents.
When the day rate is 30 cents, the night rate will be 20 cents.
When the day rate is 35 cents, the night rate will be 20 cents.
When the day rate is 40 cents, the night rate will be 20 cents.

When the day rate is over 40 cents, the night rate will be ½ of the day rate, and when the figures so computed do not end in "0" or "5" the nearest figure *do* ending shall be the correct rate.

In computing toll rates between telephone stations in Louisiana, the Official Map of the Railroad Commission of Louisiana shall be used to ascertain the distances.

All rates, orders, rules, or regulations in conflict with this order will be cancelled when this order goes into effect.

In order to allow the telephone company ample time to prepare and file its rates sheets and tariffs with the Commission, this order is made effective September 1st, 1906.

By order of the Commission.

Baton Rouge, Louisiana, August 6, 1906.

C. L. DE FUENTES, *Chairman,*
W. L. FOSTER,
OVERTON CADE, *Commissioners.*

[SEAL.] W. M. BARROW, *Secretary.*

198

EXHIBIT D–7.

Copy.

No. 642.

RAILROAD COMMISSION OF LOUISIANA
against
CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY.

Telephone Toll Rates.

To the Honorable the Railroad Commission of Louisiana:

The Cumberland Telephone & Telegraph Company hereby respectfully prays for a re-hearing of the above case, and that the judgment therein rendered and filed on the sixth day of August, 1906, be set aside on the following grounds, to-wit:

First. The judgment of the Commission states that numerous complaints have been made to the Commission against the charges made by this Company for long distance conversations between points in the State of Louisiana, but at no time, either prior to or at the trial of this case, was any specific information given to this Company of the character of the complaints or of the particular rates complained of, and the Company was unable to meet any general or indefinite complaint, and was not placed in the position to meet specific complaints with specific evidence; that this Company was not furnished with the name of a single complainant.

Second. That the Commission has not made any investigation which would allow it to reach a conclusion that the rates charged by the Company were unnecessarily high or excessive; that this Company was entitled under law, to be confronted with some charges supported by evidence sufficient to establish a *prima facie* case before it could be called upon to answer and that no evidence of any kind whatsoever was offered at the trial or produced, to show that the long distance rates of this Company were unreasonable or excessive; nor were any of the complaints made to the Commission brought to the knowledge or submitted for the inspection of or made known to this Company.

Third. That the long distance rates in force prior to this recent order, having been approved and put in force by the Commission, were in law presumed to be reasonable and proper until this presumption was met and overcome by proof, and this Company could not legally and properly be called upon to offer any evidence until this presumption had been met and a *prima facie* case made out.

Fourth. That the Commission proceeded upon the theory, as shown by its order, that the burden was upon the Company to show good reason why the reductions proposed by the Commission should not be made; whereas, under the law, the rates then in force and established by the Commission were presumed to be reasonable and fair

and could not be reduced unless good reason were shown why the reductions proposed by the Commission should be made.

199 *Fifth.* Because it was shown at the trial on behalf of this Company that the long distance rates prevailing in Louisiana were as low as existed in other parts of the country and that Louisiana was enjoying the lowest schedule of Long distance rates promulgated by any telephone company in the United States, and this, notwithstanding the fact that in many portions of the United States, much more thickly populated than Louisiana, the revenues of long distance lines greatly exceeded those in Louisiana by reason of greater population, and the expense of lines and equipment in Louisiana, by reason of its damp climate and soil, were and are greater than in other localities, and notwithstanding that it was additionally shown and known to the Commission that the proportion of Swamps and navigable waters requiring to be crossed by cables, was excessive in Louisiana.

Sixth. Because the business of this Company in this State has not heretofore, and does not now, justify the payment to the stockholders of the Company of more than seven per cent. dividend, which is less than what would be a reasonable return on capital invested, considering the nature and character of the business, and no showing whatsoever was made, and in fact there was no intimation of any kind that the Company was deriving excessive profits from its business.

Seventh. That no evidence was offered and no tender of any evidence made to show that the Company's receipts and expenditures from toll lines in the State or any examination whatsoever made into the revenues and expenses of toll lines.

Eighth. Because the toll rates in force and approved by the Commission are in themselves reasonable and fair and should not be disturbed.

Ninth. Because it is not possible for the Commission to reach a satisfactory conclusion and be able to determine that the Company's long distance toll rates are high or excessive unless it will make a thorough investigation into the revenue derived by the Company from its business, the expenditures of the Company, the depreciation, cost of maintenance, amount of investment, and other elements entering into the problem, which can only be arrived at by careful, painstaking and expert investigation and examination, and no such investigation or examination has been made and no effort made to make such investigation.

Tenth. Because the rates proposed to be established by the Commission in its Order of August 6th, 1906, if put in force, would be ruinous and cause irreparable injury to this Company, because, as this Company operates, not only in the State of Louisiana, but also in the States of Tennessee, Kentucky, Mississippi, Illinois and Indiana, the toll rates in all of said States, which are upon the same schedule as prevailing in this State, heretofore approved by this Commission, would necessarily have to be changed to conform to the reduced rates or lower rates established for Louisiana, for it would be manifestly impossible for this Company to charge more in those

states than charged in Louisiana for a similar service in the face of the fact that in those states the lines of the Company largely run through more populous districts and cost less to build and maintain, and because, if this Company accepts and acquiesces in the new or reduced rates established by this Commission, as being reasonable, it would not be able and could not claim that the higher rates charged in other states for similar service, rendered under more favorable circumstances, were not unreasonable.

200 *Eleventh.* Because, even upon the theory adopted by the Commission, its order of August 6th, 1906, is unreasonable, inconsistent and unfair because in the paragraph providing for toll rates between any two points exceeding twenty miles it establishes rates which are not only inconsistent but which would compel this Company, if it acquiesed therein, to discriminate against its patrons by charging less to patrons for long distance conversation between points exceeding twenty and less than forty miles than it charged its patrons for conversations between points less than twenty miles, the difference being in the pole-line and air-line measurement.

12th. Because a comparison of rates established by the Commission's order of August 6th, with rates established by the Commission for similar service by telegraph companies clearly shows that the proposed rates are unreasonably low.

Wherefore, petitioner respectfully prays for a re-hearing and that this, its application, be set down for hearing at a date to suit the convenience of the Commission after its vacation.

(Signed) CUMBERLAND TELEPHONE & TEL. CO.,
By DENEGRE & BLAIR, *Attorneys.*

201 EXHIBIT D-8.

Railroad Commission of Louisiana, Baton Rouge.

Order No. 452.

No. 547.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY, *ex Parte.*

Service Through Submarine Cables.

Heard May 24, 1905.

The Commission having under consideration the petition in this case, asking for certain changes in rates to parties served through sub-marine cables, and finding no reasonable necessity for the change in the rates which are now, and have been for some time, charged for such service, it is,—

Ordered, That the petition be and is denied.
By order of the Commission.
Baton Rouge, Louisiana, June 20, 1905.

C. L. DE FUENTES, *Chairman,*
W. L. FOSTER,
OVERTON CADE,
Commissioner-.

[SEAL.] W. M. BARROW, *Secretary.*

202 EXHIBIT D-9.

Railroad Commission of Louisiana.

Order No. 663.

No. 726.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY, *ex Parte.*

Additional Charges for Telephone Service Rendered Through Submarine Cables.

Heard January 9, 1907.

The Commission having under consideration the record in this case it is
Ordered, That the petition be, and is hereby denied.
By order of the Commissione*r.*
Baton Rouge, Louisiana, March 19, 1907.

OVERTON CADE,
J. J. MEREDITH,
Commissioners.

[SEAL.] (Signed) W. M. BARROW, *Secretary.*

203 *Affidavit of W. M. Barrow.*

Filed July 30, '07.

No. 66.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Before me, the undersigned authority personally came and appeared W. M. Barrow who, on oath deposes and says that he is the

Secretary of the Railroad Commission of Louisiana, defendant in the above numbered and entitled case.

Affiant deposes and says that, prior to the adoption by defendant, the Railroad Commission of Louisiana, of its order No. 488, which was adopted on the 13th December, 1905, and to become effective on the 1st January 1906, defendant had not adopted or entered any order affecting or concerning the rates to be charged in the State of Louisiana by the plaintiff Company for toll line messages or tolls, but that, on the 13th December 1905, defendant adopted its order No. 488 fixing a tariff of rates and charges for such toll line messages or what are designated in the bill of complaint as tolls, a copy of which order is hereto annexed and is marked Exhibit D 1; and that, as will be seen by said order plaintiff was entitled under and by virtue thereof, to charge demand and receive for all such tolls more than one half cent per mile by air line measurement for all distances under one hundred miles and for all tolls calculated on a basis of pole line measurement not less than one cent and in certain instances, according to distance, more than one cent per mile for conversations of three minutes duration, during the day time, and more than complainant avers it had received for messages sent by its wires on Sunday and between the hours of six o'clock P. M. and six o'clock A. M., and that it is not true, as alleged in the bill of complaint, that plaintiff has been charging for the toll service furnished by it only one half of one cent per mile for a three minutes conversation, and for Sunday and between the hours of six o'clock P. M. and six o'clock A. M. one half of the regular day rate, for the reason that it has been charging for tolls or toll line messages, the rates fixed in and by the order No. 488, just referred to.

204

That order No. 488 was adopted by defendant at the special instance and request of plaintiff, and that the tariff of rates as put in and adopted by defendant was so adopted at the special instance and request of plaintiff, and that plaintiff has, ever since, acquiesced in said order and has conducted its operations in this State under the said tariff, and that there have been no changes in conditions since the adoption of said order which would warrant or justify an increase in the tariff thus adopted.

That plaintiff presented to the Railroad Commission of Louisiana, defendant herein, on the 29th April 1904, a petition a copy of which is hereto annexed marked D 2, wherein it asked that defendant adopt a tariff for toll line service; that defendant took said petition under advisement, but did not take action thereon at once, because it desired to inquire into the merits thereof; that thereafter on the 8th November, 1905, plaintiff presented to defendant an amended application, the original of which is hereto annexed and is marked D 3, wherein an amended tariff of rates for toll line messages was prayed for, and that this amended petition was granted, and is substantially and in effect the order No. 488 entered by defendant on the 13th December, 1905, to become effective on the 1st January 1906.

That not only was the tariff of rates aforesaid, as fixed by order No. 488 acquiesced in by plaintiff, but that after said order had been

entered by defendant, defendant's Secretary did on the 30th May, 1906, write to Mr. Hardcastle, the rate clerk of the plaintiff's Company a letter on the subject of the order No. 488 which had
205 been adopted as aforesaid; that in response to the letter thus written, plaintiff sent to Baton Rouge, its said rate clerk for the purpose of checking and making up rate sheets showing the correct rates to be charged by the plaintiff company for toll line service in Louisiana in accordance with Order No. 488; that said rate clerk, together with the Secretary of the Commission made the measurements between the square centers and put down the rates to be charged between such squares centers, as well as all rates to be charged between all toll stations in Louisiana in accordance with said order.

That thereafter said Rate Clerk sent to the Secretary of the Railroad Commission the rate sheets made up by him for account of the plaintiff company for the exchanges and toll stations operated by the plaintiff company in the State of Louisiana, and that it was fully understood by the plaintiff company that said order No. 488 should have effect in the State of Louisiana is further evidenced by the fact that on the 1st August 1906, E. L. Powell the Superintendent of the plaintiff company, wrote to defendant that plaintiff recognized that order No. 488 contained the entire authority for the operation of toll line service in Louisiana, as will be seen by said letter hereto annexed as part hereof and marked D 4.

That it is not true as alleged by plaintiff in the bill of complaint that its earnings from its toll line service under the operation of the tariff of charges fixed by order No. 488 have not been remunerative and compensatory but that, on the contrary the same have been more than remunerative and require considerable reduction in order to furnish a reasonable service to the public.

That this fact is true is shown by the annual sworn statements made by plaintiff to defendant as required by the rules adopted by defendant and acquiesced in by plaintiff for the years ending June 30, 1904, June 30, 1905 and June 30, 1906, wherein it ap-
206 pears that the net earnings of Complainant in the State of Louisiana for the year ending June 30, 1904, amounted to the sum of $213,203.29; for the year ending June 30, 1905, amounted to the sum of $420,999.32; and for the year ending June 30, 1906 to the sum of $468,374.68.

That these sworn statements show a steady increase in the net earnings of plaintiff in Louisiana for several years past, and that affiant verily believes the statement of the plaintiff Company for the year ending June 30, 1907, which, however, is not required to be filed until September 15, 1907, will show a still further increase in the net earnings of plaintiff in Louisiana.

That according to the aforesaid sworn statements for the years ending June 30, 1904, June 30, 1905 and June 30, 1906, the value of complainant's property in Louisiana as sworn to by plaintiff, including its real estate is shown to be respectively for the year ending June 30, 1904, the sum of $741,509.70; for the year ending

June 30, 1905 the sum of $1,259,151.35; and for the year ending June 30, 1906, the sum of $1,682,004.70.

That the net return to plaintiff on the valuation of all of plaintiff's property in Louisiana amounts to more than twenty-five per cent. of said valuation as is shown by said sworn statements as well as by the sworn testimony given by H. Blair Smith the Auditor of Plaintiff in Nashville, Tennessee, on the 16th May, 1907, in the hearing of evidence in the case entitled Cumberland Telephone & Telegraph Company *vs.* Railroad Commission of Louisiana No. 61 of the docket of this Honorable Court, which testimony is referred to for greater certainty.

That the ratio of the operating expenses of plaintiff in Louisiana to its total gross earnings in that State for the year ending June 30, 1906, is much greater than for the year ending June 30, 1905, and for the year ending June 30, 1905, is much greater than for the year ending June 30, 1904, as will be fully seen by the increase in the net earnings of plaintiff in Louisiana during that period.

207 That there appears further from said sworn statements that the dividend of $203,417.48 for the year ending June 30th, 1905, was allotted by plaintiff as Louisiana's proportion of the entire dividend paid by plaintiff for that year, which amount based upon the value of plaintiff's property in Louisiana, as sworn to by plaintiff in its statement, exceeded thirteen per cent. of said valuation leaving a net surplus after allot-ing said dividend, of $217,581.84.

That there appears from said sworn statement that a dividend of $237,572.94 for the year ending June 30, 1906, was allotted by plaintiff in Louisiana's proportion of the entire dividend paid by plaintiff for that year which amount based upon the value of plaintiff's property in Louisiana, as sworn to by plaintiff in its statement exceeded fourteen per cent. of said valuation, leaving a net surplus after allotting said dividend of $230,801.74.

In support of the averments just made affiant annexes hereto certified extracts from the annual reports or statements made by plaintiff to defendant for the years ending June 30, 1904, June 30, 1905 and June 30, 1906, marked exhibit D. 5.

Affiant deposes and says, further that on the 6th August 1906, defendant adopted its order No. 552, to become effective on the 1st September 1906, whereby defendant undertook to reduce the tariff of charges set out in order No. 488 already referred to to a reasonable basis, as defendant had, since the adoption of said order No. 488 and after a thorough investigation of the tariff set out therein, and the operation of same, reached the conclusion that said tariff which covered the entire subject matter of tolls or toll line service in the State of Louisiana, including such service as was and is operated by means of cables in the State of Louisiana should be reduced in the interest of the public and without injury to plaintiff.

208 That as just stated, said order No. 552, a copy of which is hereto annexed and made part hereof as Exhibit D 6, would if carried out and put into effect reduce the tariff of charges in the

State of Louisiana for all tolls and toll service including cable service therein as authorized by the terms of defendant's order No. 488 which plaintiff has never sought to set aside or revoke except in, through and by the present proceeding.

That after defendant had adopted said Order No. 552, on the 6th August, 1906, plaintiff filed a petition with defendant on the 16th August, 1906, wherein it set forth as a reason why said order No. 552 should not be adopted and why plaintiff should be given a hearing therein, that "the toll rates in force and approved by the Commission are in themselves reasonable and fair and should not be disturbed," as will be fully seen by a copy of said petition for a rehearing, hereto annexed and marked Exhibit D 7.

That the toll rates referred to by plaintiff in said petition for a rehearing as being reasonable and fair were and are the toll rates established in and by order No. 488 as the only order in existence on the subject of toll rates at the time of the adoption of order No. 552.

That a rehearing was granted by defendant upon said application, but upon said rehearing defendant refused to set aside its order No. 552 hereinabove referred to.

That thereupon plaintiff instituted a suit on the 19th, October, 1906, in this Honorable Court against defendant the Railroad Commission of Louisiana, to set aside and annul said order No. 552 and in the bill of complaint filed herein it is alleged that the tariffs of rates for long distance conversations between points in the State of Louisiana, by which is meant toll rates, had been promulgated and put into effect by defendant the Railroad Commission of Louisiana (meaning thereby by order No. 488), and "that said rates
209 were and are entirely fair, just and reasonable in so far as the public is or was concerned," as will appear by paragraph 6 of the Bill of Complaint aforesaid to which reference is made, and again the allegation is made in paragraph 9 of said bill of complaint that "the tariff of rates as to the service covered by said orders (meaning thereby order No. 488) was and is reasonable, just and fair to the public and not in any wise excessive or discriminative, and under the same your orator received for its services only a fair and reasonable return for the services rendered."

That in spite of these judicial admissions of plaintiff contained in said bill of complaint and especially in paragraphs 6 and 9 thereof to which reference is specially made, plaintiff is now seeking to increase the rates for toll line service in the State of Louisiana in spite of the fact that in and by the order No. 552 adopted by defendant the Railroad Commission of Louisiana, it is sought to reduce the tariff of rates for such service set out in order No. 488 and that the whole matter of whether a reduction in said rates should be brought about is now at issue and is pending in said suit brought by plaintiff to set aside said order No. 552, and that if the prayer of the bill of complaint herein be granted and an injunction be issued as prayed for, plaintiff will be afforded the opportunity of increasing its rates for tolls and toll line service beyond the rates fixed in and by order

No. 488 aforesaid, during the pendency of said suit No. 61 and notwithstanding the fact that upon a trial of said suit judgment would be rendered maintaining order No. 552 of the Railroad Commission and reducing the rates fixed and established for such tolls and toll line service in and by said order No. 488.

That on the 13th May, 1905, plaintiff filed with defendant a petition asking that it be allowed to make an additional charge of
210 $1.00 per month per subscriber for party line service rendered through submarine cables across the Mississippi river and other similar streams and an additional charge of $3.00 per month for direct line service through submarine cables across the Mississippi River and other similar streams.

That a hearing on this petition was granted but the application was denied, as will be seen by order No. 452 issued June 20, 1905, by defendant a copy of which is annexed hereto and marked Exhibit D 8.

That again, on the 11th day of December, 1906, plaintiff filed another petition with defendant in which it asked that it be allowed to charge $5.00 per month per subscriber for direct line service, except at New Orleans, Louisiana, whenever the service would be rendered through and by means of a submarine cable and $1.50 per month, additional, for each subscriber on a five party line when served by means of a submarine cable, except at New Orleans.

That a hearing was had on this application and the said application was denied on the 19th March 1907, as will be seen by a copy of order No. 663 hereto annexed for reference, marked D 9.

That previous to the refusal by defendant to grant either of the foregoing applications of 13th May 1905, and 11th December 1906, plaintiff had submitted to defendant for the approval by defendant at various dates rates for telephone exchange service including such service by means of submarine cables across the Mississippi River and other streams in the State of Louisiana; that said exchange rates so submitted by plaintiff were accordingly approved by defendant and the first or initial order on the subject adopted by defendant is order No. 228 issued on the 10th October 1902, and that since that date new telephone exchanges have been opened from time to time in the State and that in each instance plaintiff has submitted to defendant for its approval the exchange rates which should prevail at said exchanges, and the same were accepted and approved by defendant, and have ever since been acquiesced in by plaintiff.

211 That in addition to the exchange rates which have been so submitted from time to time to defendant by plaintiff and approved by defendant, plaintiff has also, from time to time, submitted to defendant for its approval the rates to be charged by plaintiff for exchange service rendered to subscribers living beyond the radius within which the exchange rates apply for direct or single and party line service, including service through and by means of submarine cables, all of which have been accepted and approved by

defendant as being fair and reasonable, and the same have ever since been acquiesced in by plaintiff.

That the cost of maintaining the submarine cables operated by plaintiff throughout the State of Louisiana is charged by plaintiff to its general operating expenses contained in the item of maintenance.

That on the 6th May 1905, plaintiff applied to defendant for permission to offer to the public liberal discounts for toll service rendered by their purchasing from plaintiff coupon books of various values from $25.00 to $300.00 each with the understanding that such coupons should be used in payment for such toll line service; that defendant considering the offer to be in the interest of the public approved the same and authorized plaintiff to sell such coupon books, and that plaintiff has ever since acquiesced in the ruling made by defendant.

(Sig.) W. M. BARROW.

Sworn to and subscribed before me this 30th day of July, 1907.

(Sig.) ALEXIS BRIAN,
[SEAL.] *Notary Public.*

212 *Affidavit of C. L. De Fuentes.*

Filed July 30, '07.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 66.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Before me, the undersigned authority personally came and appeared C. L. De Fuentes who, on oath deposes and says that he is the Chairman of the Railroad Commission of Louisiana, defendant in the above numbered and entitled case.

Affiant deposes and says that, prior to the adoption by defendant, the Railroad Commission of Louisiana, of its order No. 488, which was adopted on the 13th December, 1905, and to become effective on the 1st January 1906, defendant had not adopted or entered any order affecting or concerning the rates to be charged in the State of Louisiana by the plaintiff Company for toll line messages or tolls, but that, on the 13th December 1905, defendant adopted its order No. 488 fixing a tariff of rates and charges for such toll line messages or what are designated in the bill of complaint as tolls, a copy of which order is hereto annexed and is marked Exhibit D 1; and that, as will be seen by said order plaintiff was entitled under and by virtue thereof, to charge demand and receive for all such tolls more than one half cent per mile by air line measurement for

all distances under one hundred miles and for all tolls calculated on a basis of pole line measurement not less than one cent and in certain instances, according to distance, more than one cent per mile for conversations of three minutes duration, during the day time, and more than complainant avers it had received for messages sent by its wires on Sunday and between the hours of six o'clock P. M. and six o'clock A. M., and that it is not true, as alleged in the bill of complaint, that plaintiff has been charging for the toll
213 service furnished by it only one half of one cent per mile for a three minutes conversation, and for Sunday and between the hours of six o'clock P. M. and six o'clock A. M. one half of the regular day rate, for the reason that it has been charging for tolls or toll line messages, the rates fixed in and by the order No. 488, just referred to.

That order No. 488 was adopted by defendant at the special instance and request of plaintiff, and that the tariff of rates as put in and adopted by defendant was so adopted at the special instance and request of plaintiff, and that plaintiff has, ever since, acquiesced in said order and has conducted its operations in this State under the said tariff, and that there have been no changes in conditions since the adoption of said order which would warrant or justify an increase in the tariff thus adopted.

That plaintiff presented to the Railroad Commission of Louisiana, defendant herein, on the 29th April 1904, a petition a copy of which is hereto annexed marked D 2, wherein it asked that defendant adopt a tariff for toll line service; that defendant took said petition under advisement, but did not take action thereon at once, because it desired to inquire into the merits thereof; that, thereafter on the 8th November, 1905, plaintiff presented to defendant an amended application, the original of which is hereto annexed and is marked D 3, wherein an amended tariff of rates for toll line messages was prayed for, and that this amended petition was granted, and is substantially and in effect the order No. 488 entered by defendant on the 13th December, 1905, to become effective on the 1st January 1906.

That not only was the tariff of rates aforesaid, as fixed by order No. 488 acquiesced in by plaintiff, but that after said order had been entered by defendant, defendant's Secretary did on the 30th May, 1906, write to Mr. Hardcastle, the rate clerk of the plaintiff's Company a letter on the subject of the order No. 488 which
214 had been adopted as aforesaid; that in response to the letter thus written, plaintiff sent to Baton Rouge, its said rate clerk for the purpose of checking and making up rate sheets showing the correct rates to be charged by the plaintiff company for toll line service in Louisiana in accordance with Order No. 488; that said rate clerk, together with the Secretary of the Commission made the measurements between the square centers and put down the rates to be charged between such squares centers, as well as all rates to be charged between all toll stations in Louisiana in accordance with said order.

That thereafter said Rate Clerk sent to the Secretary of the Rail-

road Commission the rate sheets made up by him for account of the plaintiff company for the exchanges and toll stations operated by the plaintiff company in the State of Louisiana, and that it was fully understood by the plaintiff company that said order No. 488 should have effect in the State of Louisiana is further evidenced by the fact that on the 1st August 1906, E. L. Powell the Superintendent of the plaintiff company, wrote to defendant that plaintiff recognized that order No. 488 contained the entire authority for the operation of toll line service in Louisiana, as will be seen by said letter hereto annexed as part hereof and marked D 4.

That it is not true as alleged by plaintiff in the bill of complaint that its earnings from its toll line service under the operation of the tariff of charges fixed by order No. 488 have not been remunerative and compensatory but that, on the contrary the same have been more than remunerative and require considerable reduction in order to furnish a reasonable service to the public.

That this fact is true is shown by the annual sworn statements made by plaintiff to defendant as required by the rules adopted by defendant and acquiesced in by plaintiff for the years ending June 30, 1904, June 30, 1905 and June 30, 1906, wherein it ap-
215 pears that the net earnings of Complainant in the State of Louisiana for the year ending June 30, 1904, amounted to the sum of $213,203.29; for the year ending June 30, 1905, amounted to the sum of $220,999.32; and for the year ending June 30, 1906 to the sum of $468,374.68.

That these sworn statements show a steady increase in the net earnings of plaintiff in Louisiana for several years past, and that affiant verily believes the statement of the plaintiff Company for the year ending June 30, 1907, which, however is not required to be filed until September 15, 1907, will show a still further increase in the net earnings of plaintiff in Louisiana.

That according to the aforesaid sworn statements for the years ending June 30, 1904, June 30, 1905 and June 30, 1906, the value of complainant's property in Louisiana as sworn to by plaintiff, including its real estate is shown to be respectively for the year ending June 30, 1904, the sum of $741,509.70; for the year ending June 30, 1905 the sum of $1,259,151.35; and for the year ending June 30, 1906, the sum of $1,682,004.70.

That the net return to plaintiff on the valuation of all of plaintiff's property in Louisiana amounts to more than twenty-five per cent. of said valuation as is shown by said sworn statements as well as by the sworn testimony given by H. Blair Smith the Auditor of Plaintiff in Nashville, Tennessee, on the 16th May, 1907, in the hearing of evidence in the case entitled Cumberland Telephone & Telegraph Company *vs.* Railroad Commission of Louisiana No. 61 of the docket of this Honorable Court, which testimony is referred to for greater certainty.

That the ratio of the operating expenses of plaintiff in Louisiana to its total gross earnings in that State for the year ending June 30, 1906, is much greater than for the year ending June 30, 1905, and for the year ending June 30, 1905, is much greater than for the

year ending June 30, 1904, as will be fully seen by the increase in the net earnings of plaintiff in Louisiana during that period.

216 That there appears further from said sworn statements that a dividend of $203,417.48 for the year ending June 30th, 1905 was allotted by plaintiff as Louisiana's proportion of the entire dividend paid by plaintiff for that year, which amount based upon the value of plaintiff's property in Louisiana, as sworn to by plaintiff in its statement, exceeded thirteen per cent. of said valuation leaving a net surplus after allot-ing said dividend, of $217,581.84.

That there appears from said sworn statement that a dividend of $237,572.94 for the year ending June 30, 1906, was allotted by plaintiff as Louisiana's proportion of the entire dividend paid by plaintiff for that year which amount based upon the value of plaintiff's property in Louisiana, as sworn to by plaintiff in its statement exceeded fourteen per cent. of said valuation, leaving a net surplus after allotting said dividend of $230,801.74.

In support of the averments just made affiant annexed hereto certified extracts from the annual reports or statements made by plaintiff to defendant for the years ending June 30, 1904, June 30, 1905 and June 30, 1906, marked exhibit D 5.

Affiant deposes and says, further that on the 6th August 1906, defendant adopted its order No. 552, to become effective on the 1st September 1906, whereby defendant undertook to reduce the tariff of charges set out in order No. 488 already referred to to a reasonable basis, as defendant had, since the adoption of said order No. 488 and after a thorough investigation of the tariff set out therein, and the operation of same, reached the conclusion that said tariff which covered the entire subject matter of tolls or toll line service in the State of Louisiana, including such service as was and is operated by means of cables in the State of Louisiana should be reduced in the interest of the public and without injury to plaintiff.

217 That as just stated, said order No. 552, a copy of which is hereto annexed and made part hereof as Exhibit D 6, would if carried out and put into effect reduce the tariff of charges in the State of Louisiana for all tolls and toll service including cable service therein as authorized by the terms of defendant's order No. 488 which plaintiff has never sought to set aside or revoke except in, through and by the present proceeding.

That after defendant had adopted said Order No. 552, on the 6th August, 1906, plaintiff filed a petition with defendant on the 16th August, 1906, wherein it set forth as a reason why said order No. 552 should not be adopted and why plaintiff should be given a hearing therein, that "the toll rates in force and approved by the Commission are in themselves reasonable and fair and should not be disturbed," as will be fully seen by a copy of said petition for a rehearing, hereto annexed and marked Exhibit D 7.

That the toll rates referred to by plaintiff in said petition for a rehearing as being reasonable and fair were and are the toll rates established in and by order No. 488 as the only order in existence

on the subject of toll rates at the time of the adoption of order No. 552.

That a rehearing was granted by defendant upon said application, but upon said rehearing defendant refused to set aside its order No. 552 hereinabove referred to.

That thereupon plaintiff instituted a suit on the 19th, October, 1906, in this Honorable Court against defendant the Railroad Commission of Louisiana, to set aside and annul said order No. 552 and in the bill of complaint filed therein it is alleged that the tariffs of rates for long distance conversations between points in the State of Louisiana, by which is meant toll rates, had been promulgated and put into effect by defendant the Railroad Commission of Louisiana (meaning thereby by order No. 488), and "that said rates
218 were and are entirely fair, just and reasonable in so far as the public is or was concerned," as will appear by paragraph 6 of the Bill of Complaint aforesaid to which reference is made, and again the allegation is made in paragraph 9 of said bill of complaint that "the tariff of rates as to the service covered by said orders (meaning thereby order No. 488) was and is reasonable, just and fair to the public and not in any wise excessive or discriminative, and under the same your orator received for its services only a fair and reasonable return for the services rendered."

That in spite of these judicial admissions of plaintiff contained in said bill of complaint and especially in paragraphs 6 and 9 thereof to which reference is specially made, plaintiff is now seeking to increase the rates for toll line service in the State of Louisiana in spite of the fact that in and by the order No. 552 adopted by defendant the Railroad Commission of Louisiana, it is sought to reduce the tariff of rates for such service set out in order No. 488 and that the whole matter of whether a reduction in said rates should be brought about is now at issue and is pending in said suit brought by plaintiff to set aside said order No. 552, and that if the prayer of the bill of complaint herein be granted and an injunction be issued as prayed for, plaintiff will be afforded the opportunity of increasing its rates for tolls and toll line service beyond the rates fixed in and by order No. 488 aforesaid, during the pendency of said suit No. 61 and notwithstanding the fact that upon a trial of said suit judgment would be rendered maintaining order No. 552 of the Railroad Commission and reducing the rates fixed and established for such tolls and toll line service in and by said order No. 488.

That on the 13th May, 1905, plaintiff filed with defendant a petition asking that it be allowed to make an additional charge of $1.00 per month per subscriber for party line service rendered
219 through submarine cables across the Mississippi river and other similar streams and an additional charge of $3.00 per month for direct line service through submarine cables across the Mississippi River and other similar streams.

That a hearing on this petition was granted but the application was denied, as will be seen by order No. 452 issued June 20, 1905,

by defendant a copy of which is annexed hereto and marked Exhibit D 8.

That again, on the 11th day of December, 1906, plaintiff filed another petition with defendant in which it asked that it be allowed to charge $5.00 per month per subscriber for direct line service, except at New Orleans, Louisiana, whenever the service would be rendered through and by means of a submarine cable and $1.50 per month, additional, for each subscriber on a five party line when served by means of a submarine cable, except at New Orleans.

That a hearing was had on this application and the said application was denied on the 19th March 1907, as will be seen by a copy or order No. 663 hereto annexed for reference, marked D 9.

That previous to the refusal by defendant to grant either of the foregoing applications of 13th May 1905, and 11th December 1906, plaintiff had submitted to defendant for the approval by defendant at various dates rates for telephone exchange service including such service by means of submarine cables across the Mississippi River and other streams in the State of Louisiana; that said exchange rates so submitted by plaintiff were accordingly approved by defendant and the first or initial order on the subject adopted by defendant is order No. 228 issued on the 10th October 1902, and that since that date new telephone exchanges have been opened from time to time in the State and that in each instance plaintiff has submitted to defendant for its approval the exchange rates which should prevail at said exchanges, and the same were accepted and approved by defendant, and have ever since been acquiesced in by plaintiff.

220 That in addition to the exchange rates which have been so submitted from time to time to defendant by plaintiff and approved by defendant, plaintiff has also, from time to time, submitted to defendant for its approval the rates to be charged by plaintiff for exchange service rendered to subscribers living beyond the radius within which the exchange rates apply for direct or single and party line service, including service through and by means of submarine cables, all of which have been accepted and approved by defendant as being fair and reasonable, and the same have ever since been acquiesced in by plaintiff.

That the cost of maintaining the submarine cables operated by plaintiff throughout the State of Louisiana is charged by plaintiff to its general operating expenses contained in the item of maintenance.

That on the 6th May 1905, plaintiff applied to defendant for permission to offer to the public liberal discounts for toll service rendered by their purchasing from plaintiff coupon books of various values from $25.00 to $300.00 each with the understanding that such coupons should be used in payment for such toll line service; that defendant considering the offer to be in the interest of the public approved the same and authorized plaintiff to sell such coupon books, and that plaintiff has ever since acquiesced in the ruling made by defendant.

(Sig.) C. L. DE FUENTES.

Sworn to and subscribed before me this 30th day of July, 1907.
(Sig.) ALEXIS BRIAN,
[SEAL.] *Notary Public.*

221 *Memorandum of Reasons.*

Filed July 30, 1907.

No. 66, B. R. D.

United States Circuit Court, Eastern District of Louisiana.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
RAILROAD COMMISSION OF LOUISIANA ET AL.

SAUNDERS, *J:*

Art. 283 of the Constitution of Louisiana established a Commission for the regulation of railroads, telephone, telegraph, express, steamboat and sleeping car companies. Art. 284 provides that,

"The power and authority is hereby vested in the Commission, and it is hereby made its duty, to adopt, charge or make reasonable and just rates, charges and regulations, to govern and regulate" the various companies mentioned.

In the exercise of the power so conferred, the Commission, in 1898, adopted a schedule of rates for telephone charges. This schedule was prepared and submitted by the complainant herein. That fact, however, clearly does not bind the complainant to the indefinite acceptance of any provision in the schedule which longer experience might prove to be unjust or undesireable. In 1906 the Commission ordered a general and considerable reduction of all the rates fixed in the schedule of 1898. Thereupon, complainant filed suit in this court to enjoin the Commission from enforceing its order reducing rates, alleging that complainant could not carry on the business at the reduced rates except at a large loss. That suit is still pending, and the reduction ordered by the Commission has never been actually enforced.

In the original schedule adopted in 1898, it was provided that only half rates should be charged on messages sent between the hours of 6 P. M. and 6 A. M. This provision was inserted in imitation of a similar provision in telegraph schedules, overlooking the fact that night messages over telegraph lines are not delivered to the sendee until the next day, while telephone messages are necessarily delivered the same night they are sent. The delay in delivering the
222 telegraphic message until the next day, deters senders from taking advantage of the night rate where they wish prompt delivery,—the charge for a prompt delivery message sent at night being the same as if it were sent in the day. Over telegraph lines, therefore, there is but little inducement to defer the business of the day to night in order to have advantage of the reduced rates, and the half charge has produced no inconvenience. But as the delivery of

a message over the telephone is as prompt at night as in the day—in fact often more prompt, as many persons will be more certainly found at their homes at night—the result has been to induce many persons to defer sending long distance messages until the hours between 6 P. M. and bedtime, and the wires are then crowded with an accumulation of messages which it is impossible to handle satisfactorily, so many persons wanting the use of the lines at the same time.

In the present bill, the complainant alleges that in consequence of the increased cost of material and the higher rates of wages, it is no longer possible for complainant to carry on the business even at the rates fixed in the schedule of 1898, except at a loss, and that the said rates are no longer reasonable and just and that complainant is, therefore, entitled to increase the rates: the bill goes on to allege that the night half rate should be abolished, both because of the congestion of business to which it gives rise at certain hours of the day, and because the night business is, in fact, more expensive than the day business; it also alleges that the complainant has several cables across the Mississippi River; that these cables are costly to lay and keep in repair and that complainant should, in justice, be permitted to charge extra to its customers who make use of these cables. It is further alleged that the complainant has made application to the Commission to be permitted to abolish the night rate and to make an extra charge to those who transmit messages over the river cables, but that the Commission refuses to take any action whatever on this application.

223 The bill prays that this court enjoin the Commission from interfering with it when it (complainant) abolishes the night rate and makes the extra charge on those who use the river cables; and that the Commission be specially enjoined from taking any proceedings to compel complainant to pay the fines and penalties which the statute imposes on those who violate the rules and regulations of the Commission,—these fines being $200 for each act of violation.

In effect, the bill ask- that this court authorize the complainant to raise its rates in certain particulars, and then to shield it from the judicial proceedings which the Commission would take to punish it for violating the rates established by the Commission.

The Commission insists that the rates under which the complainant is actually operating at this time, are, in reality, too high, and should be reduced, not raised in any particular. And as the right of the Commission to demand and enforce such reduction is now being asserted in the pending suit and would be abandoned if the Commission consented to the application to abolish the night rate, the Commission declined to entertain or act upon that application until the pending suit shall have been decided.

The complainant has filed statements which show that after deducting the expenses of maintenance and operation and fixed charges, there is still left a net profit to complainant on its Louisiana business of a trifle over five per cent. If the night rate were abolished and an extra charge made to those who send messages over the river cables, this profit would be increased to probably about six per cent.

In this situation, I do not think that the complainant has shown a case which entitles it to a preliminary injunction. The complainant is not only not operating at a loss, but is making a profit which, though small and probably below the rate of profit that complainant should be allowed from its investment in this busi-
224 ness, is nevertheless a rate that would be regarded as fairly satisfactory in some lines of private business in which an equal amount of capital was invested. And this situation has existed for several years and has been acquiesced in by the complainant without protest. It may very well happen that when the situation has been established by evidence to the satisfaction of the Commission, that body may conclude that the complainant is entitled to a raise in the rates. At present, however, the Commission seems to be firmly convinced that the complainant is really making much more than five per cent. on its investment; indeed, that it is making much more than seven per cent. Owing to the uncertain element of allowance for depreciation, it is always difficult to determine accurately just what any industrial enterprise is making net to the investors. That problem will be solved in the pending suit. If it is solved against the contention of the complainant, the basis of its claims will be destroyed; if it is decided against the Commission, I am bound to assume that that body will then remake the rates on what will be a fair basis of renumeration on the investment that complainant has in its Louisiana business. At this time, I see no reason for changing the situation, which has so long been acquiesced in, and which has been gradually and slowly improving a very little every year.

In the case of San Diego Land Co. & National City 174 U. S. p. 753-4, the Supreme Court of the United States say:—

"It is clear that this power (to regulate rates) could not be exer-
"cised arbitrarily and without reference to what was just and reason-
"able as between the public and those who appropriated water and
"supplied it for general use; for the State cannot, by any of its agen-
"cies, legislative, executive or judicial, withhold from the owners of
"private property just compensation for its use. That would be a
"deprivation of property without due process of law.

"Chicago, Burlington &c. Railroad *v.* Chicago, 166 U. S. 226;
"Smyth *v.* Ames, 169 U. S. 466, 524. But it should also be remem-
"bered *that the judiciary ought not to interfere with* the collection
"of rates established under legislative sanction unless they are so
"*plainly and palpably unreasonable* as to make their enforcement
"equivalent to the taking of property for public use without such
"compensation as under all the circumstances is just both to the
"owner and to the public; that is judicial interference should never
"occur unless the case presents, clearly and beyond all doubt, such
"*a flagrant attack upon the rights of property under the guise of*
"*regulations* as to *compel* the Court to say that the rates pre-
225 "scribed will necessarily have the effect to *deny just compen-*
"*sation for private property taken for the public use.* Chicago
"& Grand Trunk Railway *v.* Wellman, 143 U. S. 339, 344; Reagan
"*v.* Farmers' Loan & Trust Co., 154 U. S. 362, 399; Smyth *v.* Ames,

" above cited. See also Henderson Bridge Co. *v.* Henderson City, 173 " U. S. 592, 614, 615.

As both parties have expressed a desire to have a speedy decision of the controversy, I shall, therefore, for the present, decline to issue a preliminary injunction, with leave however to complainant to renew its motion for an injunction at any time hereafter should the situation justify it, and both parties consenting, I shall make the proper order for expediting the trial of the pending suit.

226 *Order Disallowing Restraining Order & Consolidating Cases.*

Filed July 30, 1907.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 66.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Be it remembered that this cause came on to be heard before the Honorable the Judges of the United States Courts on this 30th day of July, 1907, upon the application of the complainant for a restraining order in accordance with the prayer of the bill, which after due consideration, is, for the present, disallowed, but with leave to the Complainant to renew its application upon five days' notice to opposing counsel at any time it may see fit.

The court directs that the defendant file its answer within five days from this date; that the complainant take its proof either before or after the answer is filed, and as soon as it notifies the defendant that it has completed its proof, the defendant will be required to take its proof within Ten (10) days; and the plaintiff may take rebuttal proof within ten (10) days after the defendant closes its proof, if it so desires; and at any time after the proof is closed, this cause shall stand for immediate hearing before the court.

The court appoints Buford Duke, Esquire, of Nashville, Tenn., to take proof in Nashville, Tenn., and appoints E. M. Fuller to take proof in the city of New Orleans, La.

It is hereby ordered that this cause be consolidated with the cause already pending in this court, to-wit: No. 61, between the same parties, and both causes will be heard together, and the proof heretofore taken and the proof to be hereafter taken, will be treated as evidence in both cases.

July 30, 1907.
(Signed) EUGENE D. SAUNDERS, *Judge.*

227 *Defendant's Answer.*

Filed August 5, 1907.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 66.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
versus
RAILROAD COMMISSION OF LOUISIANA.

The Answer of the Railroad Commission of Louisiana, Defendant, to the Bill of Complaint of the Cumberland Telephone & Telegraph Company, Plaintiff.

This defendant, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says:—

Respondent admits all and singular the allegations contained in the first, second, third, fourth and fifth Articles of said Bill of Complaint, and so much of Article 6 of said Bill of Complaint, save that your respondent is in ignorance as to whether or not the business of the Complainant has been built up since its organization to the present time along the most careful lines and with the greatest diligence that has been possible to be given by its officers and the facilities and convenience of its patrons and any pressing desire for further extension and development.

For answer to the Seventh Article of said Bill of Complaint, your respondent says, it is not true as alleged in the first paragraph thereof, that plaintiff has been charging for toll service one-half of one cent per mile for three minutes conversation and one-third of the
228 initial charge for each additional one minute of time consumed by the patron and for Sunday and between six P. M. and 6 A. M. one-half the regular day rate; but respondent avers that prior to the adoption by respondent of its order No. 488, which was adopted on the 1st of January 1906, respondent had not adopted or entered any order effecting or concerning the rates to be charged in the State of Louisiana by the Complainant for toll line messages or tolls, but that, on the 13th of December, 1906, respondent adopted its order No. 488, fixing a tariff of rates and charges for such toll line messages or what are designated in the Bill of Complaint as tolls, a copy of which order is hereto annexed as part hereof, marked Exhibit D 1; and that, as will be seen by said order, Complainant was entitled, under and by virtue thereof, to charge, demand and receive for all such tolls more than one half cent per mile by air line measurement for all distances under one

hundred miles and for all tolls calculated on a basis of pole line measurement not less than one cent, and in certain instances, according to distance, more than one cent per mile for conversations of three minutes duration, during the day time, and more than Complainant avers it had received for messages sent by its wires on Sunday and between the hours of six o'clock P. M. and six o'clock A. M., and that it is not true, as alleged in the Bill of Complaint, that Complainant had been charging for the toll service furnished by it only one half of one cent per mile for three minutes conversation, and for Sunday and between the hours of six o'clock P. M. and six o'clock A. M., one half of the regular day rate, for the reason that it has been charging for tolls or toll line messages the rates fixed in and by the order No. 488 just referred to.

That order No. 488 was adopted by respondent at the special instance and request of Complainant, and that the tariff of rates as put in and adopted by respondent was so adopted at the special instance and request of Complainant and that Complainant has, ever since, acquiesced in said order and has conducted its operations in
229 this State under the said tariff, and that there have been no changes in conditions since the adoption of said order which would warrant or justify an increase in the tariff thus adopted.

That on the 6th of August, 1906, respondent adopted its order No. 552, to become effective on the 1st of September, 1906, whereby respondent undertook to reduce the tariff of charges set out in order No. 488 already referred to, to a reasonable basis, as respondent had, since the adoption of said order No. 488, and after a thorough investigation of the tariff set out therein, and the operation of same, reached the conclusion that said tariff which covered the entire subject matter of tolls or toll line service in the State of Louisiana, including such service as was and is operated by means of cables in the State of Louisiana, should be reduced in the interest of the public and without injury to plaintiff.

That as just stated, said order No. 552, a copy of which is hereto annexed and made part hereof as Exhibit D 6, would, if carried out and put into effect, reduce the tariff of charges in the State of Louisiana, for all tolls and toll service including cable service therein, as authorized by the terms of respondent's order No. 488 which plaintiff has never sought to set aside or revoke except in through and by the present proceeding.

That after respondent had adopted said order No. 552, on the 6th of August, 1906, plaintiff filed a petition with respondent on the 16th of August, 1906, wherein it set forth as a reason why said order No. 552 should not be adopted and why plaintiff should be given a hearing therein, that "the toll rates in force and approved by the Commission are in themselves reasonable and fair and should not be disturbed," as will be fully seen by a copy of said petition for a rehearing, hereto annexed and marked Exhibit D 7.

That the toll rates referred to by plaintiff in said petition for a rehearing as being reasonable and fair were and are the toll
230 rates established in and by order No. 488 as the only order in existence on the subject of toll rates at the time of the adoption of order No. 552.

That a rehearing was granted by respondent upon said application, but upon said rehearing, respondent refused to set aside its order No. 552 hereinabove referred to.

That thereupon plaintiff instituted a suit on the 19th of October, 1906, in this Honorable Court against respondent, the Railroad Commission of Louisiana, to set aside and annul said order No. 552, and in the Bill of Complaint filed therein, it is alleged that the tariff of rates for long distance conversation between points in the State of Louisiana, by which is meant toll rates, had been promulgated and put into effect by respondent, (meaning thereby by order No. 488), and "that said rates were and are entirely fair, just and reasonable in so far as the public is or was concerned," as will appear by paragraph 6 of the Bill of Complaint aforesaid to which reference is made, and again the allegation is made in paragraph 9 of said Bill of Complaint that "the tariff of rates as to the service covered by said orders (meaning thereby order No. 488) was and is reasonable, just and fair to the public and not in any wise excessive or discriminative and under the same your orator received for its services only a fair and reasonable return for the services rendered."

That in spite of these judicial admissions of plaintiff contained in said Bill of Complaint, and especially in paragraphs 6 and 9 thereof, to which reference is specially made, plaintiff is now seeking to increase the rates for toll line service in the State of Louisiana, in spite of the fact that in and by the order No. 552 adopted by respondent, it ought to reduce the tariff rates for such service set out in order No. 488 and that the whole matter of whether a reduction in said rates should be brought about is now at issue and is pending in said suit brought by plaintiff to set aside said order No. 552, and that if
231 the prayer of the Bill of Complaint herein be granted and an injunction be issued as prayed for, plaintiff will be afforded the opportunity of increasing its rates for tolls and toll line service beyond the rates fixed in and by order No. 488 aforesaid, during the pendency of said suit No. 61 and notwithstanding the fact that upon a trial of said suit, judgment would be rendered maintaining order No. 552 of the Railroad Commission and reducing the rates fixed and established for such tolls and toll line service in and by said order No. 488.

For answer to the allegations of the second, third, fourth, fifth and sixth paragraphs of said Article 7, respondent says, it is in ignorance of the matters and things therein set forth, save for further answer respondent says, it is not true that the reduced rate for night and Sunday service has been abused by plaintiff's patrons or that it has become necessary that the reduced rate be withdrawn and an uniform rate established for all hours of the day and night, so that the uniform rate for all time, day and night, for telephone service over the toll line shall be one half of one cent per mile for three minutes conversation or less and one third the initial charge for each additional one minute conversation, but on the contrary said rate is now excessive for both day and night and should be reduced, as required by order No. 552, above referred to and in controversy in the suit No. 61 which said suit is made part hereof for

greater certainty. And it is not true that there is anything or any reason inherent in the telephone business wherein it differs radically and materially from any other known business, which justifies any increase of the night rate contemplated by this Bill of complaint and Article 7 thereof, but, on the contrary, plaintiff is now and has been for years past earning more than a reasonable return upon its investment, requiring further reduction in both day and night rate for toll service, which is the subject of said suit No. 61 of the docket of this Court, here referred to for greater certainty
232 and made part hereof. That respondent is in ignorance of the facts set forth in the fourth, fifth and six paragraphs of said Article 7 of the Bill of Complaint save that your respondent is informed that plaintiff sends telegrams during the night at half rates, but that if the other facts are true, which however respondent denies, respondent avers that they are immaterial and irrelevant to the issues herein involved.

In answer to Article 8 of said Bill of Complaint, your respondent says that it is not true that the said night rates are objectiona-l- or unreasonable, but on the contrary, are more than reasonable and require further reduction, as contemplated and set forth in respondent's order No. 552, and it is not true that the rates for said night service are in themselves insufficient and unreasonable low, for the services rendered, or that they do not constitute a fair or reasonable compensation therefor, or that they constitute a distinction in rates without a difference in service or expense thereof to warrant the said distinction, but, even if it were true, as alleged, (which, however is denied) such differences or distinctions are immaterial and irrelevant for the reason that the aggregate net revenues of plaintiff's telephone business in Louisiana are so great, as to require further reduction in both day and night rates, as above set forth, which further reduction is the subject of the controversy in suit No. 61 heretofore referred to. And it is not true that from plaintiff's experience in operating its telephone system as a whole in other States, or in Louisiana, plaintiff would have been unable to earn a fair return on its business, nor does such experience demonstrate that the rates charged for night messages are inadequate and unreasonable but, that on the contrary, are more than adequate and too high as above stated and the expense and trouble for operating its toll lines at night are so operated in connection with its other telephone business and telephone exchange business as to in no manner
233 affect the operation of toll lines at night and the expense would be the same whether the night toll service was employed or not. And even if this were not so, respondent says, that the matters and things set forth are immaterial and irrelevant to the questions herein involved, it being the fact that plaintiff is earning more on its investment in Louisiana and in its business taken as a whole and in the aggregate, so as to warrant a decrease instead of an increase in night rates, and accordingly said rates, as well as days rates should be reduced instead of increased, which questions are likewise involved in suit No. 61, above referred to.

Your respondent for further answer to said Article 8 of the Bill

of Complaint admits the incorporation of plaintiff under the laws of Kentucky as set forth in paragraph 3 of said Article 8, and admits that it was organized for the purpose of engaging in the telephone and telegraph business, and that it has continuously engaged in such business since its organization.

That respondent is in ignorance of the matters and things alleged in the fourth and fifth paragraphs of Article 8 of said Bill of Complaint, and in answer to the sixth paragraph of said Article 8, respondent says that the dividend rate referred to is not truly and sufficiently stated in said sixth paragraph, as your respondent is informed and verily believes, and so believing, alleges that the dividends declared and paid to the stockholders have steadily increased from 1894 until the present time. That the dividends declared and paid from and including the year 1894, up to and including the year, 1897, were four per cent. per annum, which is considered in the business and financial world as a fair and reasonable return on stock of public service corporations; that for the year 1898, the dividend declared and paid was five per cent.; for the year, 1899, six per cent., and from and inclusive of the year, 1900, down
234 to and inclusive of the year, 1906, seven per cent. That it will thus be seen from these steady increase of dividends declared and paid to the stockholders, the business of plaintiff and particularly its net revenues, have greatly increased, and accordingly respondent avers that the payment of a seven per cent. dividend for the six years from 1900 to 1906, evidences the increase both in the business and in the net yearly revenues of plaintiff, and that on a basis of a market value of said stock, said present market value being $104 a share for each share of $100 at par, as respondent is informed and verily believes, and so believing, alleges. And now respondent further avers and charges that the declaration and payment of said dividend of seven per cent., is far in excess of a fair return to the stockholders on said stock and upon the investment made in Louisiana. That the reduction in toll rates for both day and night as contemplated fixed and ordered by respondent's order No. 552 now in controversy in the suit No. 61 of the docket above referred to, will not in any manner affect the declaration and payment of said seven per cent. dividend, by reason of the large and increasing revenues and business of plaintiff, and even if it should (which, however, this respondent does not admit and hereby expressly denies) it would not seriously or to any considerable or material extent affect the declaration and payment of said dividend, and a dividend could be declared and paid, which would and does involve a fair and beneficial return on the stock and upon the investment made.

In answer to the seventh paragraph of said Article 8, respondent says that it is not true that there is any injustice or unfairness in the night rates taken separately, but, on the contrary taken separately said night rates are too high and should be reduced as outlined in respondent's order No. 552, above referred to, nor is it true that from plaintiff's experience, the rate for day messages have been or should be double the night rates. And even if this were so, the

matters and things alleged in said paragraph 7 of Article 8
235 of said Bill of Complaint, are wholly immaterial and irrelevant so long as the aggregate net revenues justify the reduction in rates for the whole service involved in plaintiff's business in this State.

To the eighth and ninth paragraphs of said Article 8 of the Bill of Complaint, respondent pleads ignorance. To the tenth paragraph of Article 8 of said Bill of Complaint, respondent says it is not true that in spite of plaintiff's increase in business the net receipts in Louisiana have been smaller in proportion to the capital invested than in the remainder of the territory of plaintiff, but even if true, it is immaterial and irrelevant so long as said net receipts are compensatory for Louisiana and involve a fair return on plaintiff's investment. And, accordingly, it does not show, as alleged in said tenth paragraph, that under the application of said night rates to all messages, the business in Louisiana would have been entirely unremunerative or do not afford a fair return for the service rendered, and even if true, the matters and things alleged in said tenth paragraph are wholly immaterial and irrelevant.

To the eleventh paragraph of said Bill of Complaint respondent says, it is not true that plaintiff's net receipts for the current year will be less and respondent pleads ignorance as to the excess of expenses for the current year over 1906. That respondent pleads ignorance of the constantly increasing price of material and labor. That whilst respondent admits that the extent of service given by plaintiff to its patrons is constantly increasing, it is not true that its receipts are decreasing in proportion, but that on the contrary, respondent is informed, verily believes and so believing avers that plaintiff's receipts are increasing in proportion to the increasing service given
236 its patrons and even if it were otherwise, the matters and things alleged in said tenth paragraph are wholly immaterial and irrelevant so long as plaintiff receives in the aggregate a fair return upon its investment.

To the twelfth, thirteenth, fourteenth and fifteenth paragraphs of said Article 8 of the Bill of Complaint, respondent pleads ignorance, and even if said allegations are true, as alleged, respondent avers immateriality of said allegations.

To the sixteenth paragraph of said Article 8 of the Bill of Complaint, respondent says that it is not true that plaintiff's business has not been satisfactory, but, that on the contrary, its business is and has been satisfactory to both the plaintiff and the public, as far as its net receipts are concerned, though respondent avers that whether said business is or is not satisfactory, it is immaterial and irrelevant; but your respondent avers that its said business is and has been highly remunerative. That so far as the allegation respecting the impossibility of plaintiff to raise additional capital with which to meet the requirements of the public is concerned, respondent says it is in ignorance thereof, and that it is immaterial and irrelevant to the issues unvolved. That in all other respects, respondent otherwise pleads ignorance of the several and immaterial matters and things alleged in said sixteenth paragraph, save that respondent avers that it is not

true that there is or has been a decrease in earnings, by reason of any alleged or supposed increase in the price of materials and labor, which, however, your respondent pleads ignorance. Nor is it true that the per cent. of expenses to gross receipts have been steadily increasing, nor is it true that there is any cause or reason for any actual or imaginary serious concern of plaintiff's executive officers
237 for the future of the business, as well as the security of the investment already made. And even if true, such actual or imaginary serious concern on the part of plaintiff's executive officers is immaterial and irrelevant.

To the seventeenth paragraph of said Article 8 of the Bill of Complaint, respondent pleads ignorance of the matters and things alleged, save for further answer that it is not true that there will be a loss of revenue on account of any improper discrimination in favor for night service, respondent averring that there is no discrimination whatever, nor will it nor does it appear that there is any loss from the application of the night rate to all messages, and it is not true that same are or would have been unremunerative and confiscatory, or that the prices paid therefor are unreasonable low, but, that on the contrary, same are more than remunerative, compensatory and too high and should be reduced for the reasons above stated.

To the eighteenth paragraph of said Article 8 of the Bill of Complaint, respondent again pleads ignorance of the facts therein stated; and further answering says, that it is not true that the failure to abolish the differential therein complained of will continuously work injury to plaintiff, or that plaintiff would lose anything by the continuance of present conditions, or that it would be impossible to recover any money or moneys from its patrons, since it is true and respondent avers that plaintiff is receiving more than the continuance of said night rate warrant, which said night rates instead of being increased ought to be reduced, as required by respondent's order No. 552, above referred to and made part hereof.

In answer to Article 9 of said Bill of Complaint, your respondent further shows that by a stipulation between Counsel, the answer to the ninth Article of said Bill of Complaint has been dispensed with.

238 And for answer to the first paragraph of Article 10 of said Bill of Complaint, your correspondent says, that it is neither true nor material to the issues herein, that where specific and separable expenses attended necessary and particular class of service, that particular class of service should bear the proportion of such special expense.

Respondent for further answer to said first paragraph of Article 10, admits that Complainant has laid cables under the Missisippi River and other similar bodies of water, but says that it is not true that these cables in similar streams are few and unimportant, not only in original cost and maintenance compared with those laid by plaintiff across the Mississippi River, and it is not true that the construction and maintenance of cables across the Mississippi River are particularly and unusually expensive, but your respondent avers that all the matters and things respecting said cables and set forth in

said first paragraph of Article 10, it not only pleads ignorance, but are immaterial and irrelevant.

For answer to the second, third and fourth paragraphs of said Article 10, respondent not only pleads ignorance, but avers that the allegations thereof are immaterial and irrelevant. That in answer to the fifth, sixth and seventh paragraphs, respondent says that it is not true that the proposed increase for cable service would be unfair, discriminatory, and likewise avers that the allegations thereof are irrelevant and immaterial for the reasons above given that plaintiff is receiving more than an adequate and fair compensation for the services to the public and the rates for cable service should be reduced instead of increased and should be fixed, as provided for and covered by order No. 552, made part hereof.

In answer to the Eleventh Article of said Bill of Complaint, your respondent admits that Complainant filed a petition for the abolition of special rates for night service and for the discontinuance of the sale of toll line coupons at a discount from the established
239 rates and for the abolition of the special double exchange service, as set forth in said paragraph; but your respondent denies the truth of the reasons assigned for said application. Respondent further admits the allegations of the second paragraph of Article 12, as well as the third paragraph thereof.

For answer to Article 13, respondent admits the allegations of the first paragraph, but with the qualification and averment that it is true that respondent considers the existence of suit No. 61 of the docket of this Honorable Court, as preventing action by it upon the application by Complainant for changes not only in its general rates but in any particular rate.

In answer to the second paragraph of said Article 13, your respondent admits that said suit No. 61 complains of order 552 of respondent proposing to carry out a general reduction of Complainant's toll line rates throughout the State of Louisiana; that said suit is authorized and proper under the Constitution of Louisiana, wherein it is provided that where any rate, ruling tariff or schedule of said Commission is complained of by suit in any Court of competent jurisdiction, no penalty shall be inflicted for disobedience thereto until the final determination of said suit and then only for acts subsequently committed. Respondent admits that the result of said suit No. 61, under the provisions of the Constitution is that no fines or penalties can be imposed for acts committed during the pendency of said suit No. 61 but says that it is not true as alleged in the second paragraph of article 13 that the result of said suit under said article of the Constitution is that no fines or penalties can be imposed for acts committed during the pendency of said suit, in violation of any proposed increase of rates and it is not true that if any fines or penalties can be imposed during the pendency of said suit, it could only be for a disobedience to the tariff of rates, as existing at the time of said proposed increase.

240 And for answer to the third paragraph of said Article 13 of said bill of complaint, your respondent admits that suit No. 61 above mentioned, referred to the order of respondent, estab-

lishing a general and uniform reduction in toll rates and charges, but your respondent says that it is not true that said decrease in no manner relates to any question of the relation between night and day rates, or making extra charges for cable service, your respondent, however, admitting that said general and uniform reduction in no manner considered the matter of the sale of coupon tickets. And, in further answer to said third paragraph of Article 13 of said Bill of Complaint, respondent says that it is not true there are any discrepancies and inequalities in the existing tariff, or in order No. 552, proposing a uniform decrease in toll rates and charges, or that said order No. 552 should in any wise be corrected; but that on the contrary, the rates fixed by said order No. 552 are legal and proper, authorized by the Constitution of Louisiana and by the Constitution of the United States and should be maintained.

For answer to Article 14 of said Bill of Complaint your respondent says that it is not true that the proposed increased change of rates claimed for by said Bill of Complaint are reasonable fair, and just to the public, and not in any wise discriminative; accordingly avers that the increase of toll rates for night service, as well as the extra charge for cable service, as outlined in the Bill of Complaint, are unjust, unreasonable and unfair to the public excessive and discriminating; and that the rates fixed by order No. 488 should on the contrary be decreased instead of increased, and the rates fixed by order No. 552 be adjudged fair, reasonable and just both to the public and to the said Complainant. Respondent further says it is not true that it has refused the application of said Complainant to increase the rates, but avers that it refrained from acting of the pendency of suit No. 61 above referred to, and accordingly says — is not true that its action in the premises is unjust,
241 unfair and unreasonable; but, that on the contrary, any other action would be in violation of its order No. 552 and its rights and defenses in suit No. 61 above referred to, and all its acts and doings herein are just, fair and reasonable, That it is immaterial for the purposes of this suit whether any particular change is made both in regard to the relation between the classes of rates covered by the application of Complainant and the rates fixed by orders No. 588 and 552, as a whole and your respondent specially denies that its acts and doings referred to, constitute for the reasons set forth in said Bill of Complaint, a taking of Complainant's property without due process of law and without compensation being previously made, contrary to and in violation of Section 1, Article 14 of the Amendments to the Constitution of the United States, and of Articles 2 to 167 of the Constitution of Louisiana of the year 1898.

For answer to the Fifteenth Article of said Bill of Complaint respondent admits the allegations in respect to the right of action provided by Articles 285 and 286 of the Constitution of Louisiana, but says it is not true that plaintiff would by obeying the orders of respondent *would* either be compelled to render service under the orders of respondent at non-compensatory rates, or be subjected to innumerable suits for fines and penalties and incur the risk of having

imposed upon it so numerous fines and penalties that payment thereof will exceed its capital unless it can obtain relief from said orders and said suits for fines and penalties by the institution of this suit and the suspension of the aforesaid orders of Respondent, until the contest made in this suit and Complainant's rights as herein claimed shall have been firstly determined. Respondent further admits that this cause is one of a civil nature, but says it is not true that it is one arising under the Constitution and laws of the United States, or that the matter in dispute herein exceeds $5000,
242 exclusive of interest and costs but on the contrary respondent avers that the matter in dispute does not exceed the sum or value of $2000, exclusive of interest and costs.

Wherefore defendant having fully answered confessed, traversed and avoided or denied all the matters in said Bill of Complaint material to be answered according to its best knowledge and belief, humbly prays this Honorable Court to enter judgment herein; that this defendant be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained, and as in duty bound, etc.

(Signed) WALTER GUION, *Att'y Gen'l.*

(Sig.) E. H. McCALEB, Jr.,
Of Counsel for Defendant.

243 *Replication.*

Filed August 6, 1907.

United States Circuit Court, Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division.

No. 66.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Consolidated with

No. 13473.

New Orleans Division of said Court.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
RAILROAD COMMISSION OF LOUISIANA.

The Replication of the Above-named Plaintiff to the Answer of the Above-named Defendant.

The replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold

errors, uncertainties and insufficiencies of the answer of said defendant, filed herein on Monday, August fifth, A. D. 1907, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

(Signed) DENEGRE & BLAIR,
" VICTOR LEOVY,
Solicitors for Plaintiff.

244 *Note of Evidence of Complaint.*

Filed August 19, 1907.

Nos. 61 and 66 (Consolidated).

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Upon the trial of these causes the plaintiff offered the depositions of James E. Caldwell and H. Blair Smith, taken in cause No. 61 on May 8, 1907, together with the exhibits referred to therein, Second, The depositions of H. Blair Smith, Samuel J. Keith, John T. Landis, Leland Hume, E. L. Powell, James E. Caldwell, J. G. Wray, and George J. Yundt, taken in Nashville and filed August 16th, 1907, together with the various exhibites referred to herein, The deposition of E. L. Powell taken August 17th at New Orleans; The opinion of the Railroad Commission of Louisiana in case No. 79, New Orleans Board of Trade against Cumberland Telephone & Telegraph Company; Deposition of George W. Wilkinson taken on Interrogatories in New York, in August, 1[illegible]

Respectfully submitted,
(Signed) WM. L. GRANBERY,
Att'y for Plaintiff.

245 *Testimony & Depositions for Complainant.*

Taken in Nashville and Filed August 16, 1907.

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	Direct.	Cross.
H. Blair Smith	2	10
Samuel J. Keith	20	22
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246 In the United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

Nos. 61 and 66, Consolidated.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF STATE OF LOUISIANA.

The Depositions of H. Blair Smith, E. L. Powell, Leeland Hume, James E. Caldwell, Samuel J. Keith, John T. Landis and Others, Witnesses Taken by the Plaintiff in the Above Entitled Causes, to be Used as Evidence on the Hearing.

And it is agreed that when these depositions are written out, signed and sworn to by the witnesses, that they shall be transmitted by Buford Duke, Esq., Stenographer and Notary Public, to the Clerk of the United States Circuit Court at New Orleans, La., to be filed as evidence in the above entitled couses.

Present, Mr. W. L. Granbery, for the Plaintiff; Messrs. E. H. McCaleb, Jr., and Mr. W. M. Barrow, for the defendant.

247 The defendant objects to and protests against the taking of the deposition of Mr. E. L. Powell, or any other witness now residing in the City of New Orleans, La.

Counsel for the plaintiff desires to make the following explanation and statement: That in order to be able to finish the proof in the time allowed by the Court, it deemed it proper to have the witness E. L. Powell, who resides in Louisiana, to come to Nashville, Tennessee, and give his deposition, instead of closing the proof at Nashville, and then proceeding to take Mr. Powell's deposition elsewhere. This was done so as to close the proof so that the case might be heard as soon as possible.

Said witness, H. BLAIR SMITH, being first duly sworn, deposed as follows:

Direct examination.

By Mr. GRANBERY for plaintiff:

Q. You are the same H. Blair Smith who testified in case No. 61 during May of this year, are you not?

A. Yes sir.

Q. You filed a statement with your deposition, showing the receipts and disbursements of the plaintiff in Louisiana for the
248 year ending June 30th, 1906?

A. I did.

Q. Have you a similar statement for the year ending December 31st, 1906?

A. I have.

Q. Will you file it as Exhibit No. 1 to this, your deposition?

A. I will and do so. But, in filing this statement I wish to make an explanation. The statement of earnings and expenses in Louisiana, as shown in the Exhibit to the bill, were prepared in my office during my absence, on account of sickness in my family. When I returned, I found that some of the revenues which the company derived from inter-state telegraph contracts, were not included in the statement and I have added these, increasing thereby the net revenue about $21,000.

Q. Were those contracts you speak of, general contracts, with the general office?

A. They were general contracts at the general office and they were not considered in my office as permanent, and were not classified as tolls or rentals and were overlooked.

Q. I will ask you if that statement as now filed by you includes in the State of Louisiana, both intra-state and inter-state and from every other source whatever?

A. It does.

249 Q. Is it made upon the same basis and does it show the same character of information for the period covered, as the statement furnished with your former deposition?

A. It does.

Q. Will you please file as Exhibit No. 2 to your deposition, a statement showing the income and investment in the State of Louisiana, for the year ending June 30th, 1906, and for the year ending December 31st, 1906, and for the six months ending June 30th, 1907, and showing the per cent. of net income to investment?

A. I will.

Q. I will ask you to state if the period ending June 30th, 1907, is as late a date as you can bring the earnings and investments of the company down to at this time?

A. It is.

Q. I will ask you to file a statement, marked Exhibit No. 3, showing in detail the earnings and in detail the expenses and the construction or capital invested, to the per cent. of earnings to capital for the year ending June 30th, 1906?

A. I will do so.

Q. Will you file a similar statement for the year ending December 31st, 1906, and mark it Exhibit No. 4?

A. I will.

Q. I will ask you to file a similar statement for the first six months of the year 1907, and mark it Exhibit No. 5 to this your deposition?

249½ A. I will do so.

Q. I will ask you to file a statement showing the increase or the estimated increase, of revenues to the per cent, of capital account that would be obtained from the relief prayed in the bill, assuming the same number of messages are handled on the new basis as were handled on the old basis and will you file this marked Exhibit No. 6 to this your deposition?

A. Yes sir.

Q. I will ask you to state whether or not all of the various statements, exhibits one to six inclusive, have been prepared in your office, under your directions and supervision, and from the records in your office?

A. They have.

Q. Are they correct?

A I believe them to be.

Q. State whether or not the various amounts shown in the various statements under the head of investment, are the actual amounts expended by the company in the construction of the various plants in the State of Louisiana?

A. Plants and toll lines, yes sir.

Q. I will ask you to state whether these various statements and the facts disclosed therein, are made up on the same basis and whether you will give the same answers to similar questions with respect to these statements as were asked you with reference to the

250 statements filed with your deposition in May last?

A. Yes sir.

Q. Please state whether or not Exhibit No. 1 to the bill of complaint, showing the comparative statement of Louisiana night revenue and revenue for night connections, figured on day basis for the month of May 1907, is correct?

A. It is.

Q. Do you adopt it as a part of your deposition?

A. I do.

Q. State whether Exhibit No. 4 to the bill is correct and whether you adopt it as a part of your deposition?

A. It is correct as far as it goes, but I have not included the New Orleans business or the messages going through the cables at New Orleans.

Q. Are the messages going through the cables at New Orleans included in your statement, Exhibit No. 6?

A. Yes sir.

Q. Mr. Smith, will you please state the number of telephones in use by the plaintiff in the State of Louisiana, on July 1st, 1898, and July 1st, 1907?

A. By telephones, you mean subscribers?

Q. Yes?
A. On July 1st, 1898, 2729; on July 1st, 1907, 30,983.
Q. How many exchanges on July 1st, 1898, and on July 1st, 1907?
251 A. On July 1st, 1898, ten; July 1st, 1907, sixty.
Q. How many toll stations at those periods?
A. July 1st, 1898, 150; July 1st, 1907, 294, and in order that this may be more clearly understood, I would state that what I term toll stations are those points from which every message is paid for. There are included in subscribers, a large number of stations which are located in plantations and suburban postoffices, which are, in reality, toll stations, but classified as subscribers.
Q. How many would you say, in your opinion?
A. I would say the suburban postoffices would run up to a hundred and fifty, and how many plantations, I can not say.
Q. How many miles of poles for toll lines did this company have in Louisiana on April 30th, 1907?
A. 1,687.17.
Q. How many miles of wire for toll lines, for the same date?
A. 18,644.09.
Q. Mr. Smith, are you able to state whether or not the price of material of the various kinds used in the telephone art, and the price paid for labor, in the State of Louisiana, have increased or decreased in the last few years?
A. I am. They have increased. In the year 1905 this company opened forty-three new exchanges; in the year 1906 the company opened sixty-eight new exchanges. The cost per subscriber
252 of those added during 1906 in these exchanges over those of 1905, shows an increase of twenty-eight per cent.
Q. I will ask you to state whether or not that percentage holds good for the State of Louisiana?
A. It does.
Q. Mr. Smith, I will ask you to state whether or not if the structures are built in such a way that the depreciation will be less, whether or not your capital account will be more or less.
A. The capital account will be greater.
Q. In other words, as your property is constructed to lessen depreciation, it increases your capital account?
A. It does.
Q. I will ask you to state whether or not your observations as Auditor of this Company, through a period of many years, enables you to testify whether or not economics are practiced by the company in the construction and maintaining and operating its properties?
A. I believe they are; I know they are. There is a great deal of time and attention given to operating, and constructing as economically as is consistent.
Q. I will ask you to state whether or not the company maintains any material at its ware-houses in the State of Louisiana, for the purpose of maintaining or reconstructing its properties in that state?

A. It does.

Q. How much, on an average?

253 A. An average of fifty thousand dollars' worth.

Q. Is this included in your capital account?

A. It is not.

Q. Is any interest or depreciation figured on that material, in your statement?

A. It is not.

Q. I will ask you whether or not the company carries a large floating indebtednes from time to time?

A. It does.

Q. Do you know what it is at the present time?

A. About three millions of dollars.

Q. I will ask you to state what it will average during the last three years?

A. It will average three million dollars.

Q. State whether or not you have included in your statements, any interest on this floating debt?

A. I have not.

Q. I will ask you to state whether or not you have included in your capital account for Louisiana, in the various statements filed by you, the value of any real estate owned by the company?

A. I have not.

Q. State whether or not you have included in any of your statements filed, any depreciation on real estate?

A. I have not.

254 Cross-examination.

By Mr. McCaleb, Jr., for Defendant:

Q. Referring to Exhibit No. 2, just filed, how do you arrive at the net income for the year ending June 30th, 1906, stated at $266,249.56?

A. The earnings include under exchange service, all rentals for exchange service for all exchanges within the State of Louisiana; also the rental on instruments leased to connecting companies; all pay station revenues and miscellaneous earnings for exchange services. Under toll service is included revenue derived from all toll conversations within the State of Louisiana, the originating revenue on all inter-state conversations paid for in Louisiana, and Louisiana's proportion of the revenue derived from the inter-state temporary leased wire contracts. Also, any toll commissions and other miscellaneous toll earnings. In Miscellaneous is included the revenue from directory advertising and all other miscellaneous items not classified in the foregoing.

In expenses, under general, is included Louisiana's proportion of general expenses, which can not be apportioned otherwise than by prorating to the various states, and expenses for taxes, postage, printing, stationery, legal, uncollectable accounts and other miscellaneous general expenses. Under operating is included sal-

255 aries paid operators, clerks, collectors, solicitors, advertising, traveling expenses in connection with operating, the rent,

light and heat for operating purposes and miscellaneous expenses. In maintenance is included salaries and wages, paid managers and agents, linemen, repairers, materials used in maintaining the property, labor hire and traveling expenses for the purpose of maintenance, damage and compensation incurred in maintenance, insurance, rent, light and heat used in connection with maintenance and miscellaneous maintenance expenses, and also the amount actually expended during the period, in reconstruction purposes. In depreciation is shown the balance of the unexpended portion set aside for depreciation which has not been used during the period in reconstruction, figured on the basis of seven and one-half per cent. of the cost of the properties, less the amount actually expended in reconstruction. In instrument rental is included four and one-half per cent. of the earnings derived from the use of instruments which we pay to the American Bell Telephone Co. according to contract. Then, from the gross earnings is deducted the total of the expenses, which gives the net revenue.

Q. Now, Mr. Smith, according to this Exhibit No. 2, you have the total investment in Louisiana up to June 30th, 1906, at $4,722,435.74. From what source is that investment made?

A. Subscription to capital stock, from the issuance of bonds, from borrowed money and from surplus.

256 Q. Could you give that in detail?

A. I could not, because if a dollar comes into the treasury, I do not tag it.

Q. Could you give me a statement of the investment separately made in each state in which you operate in the same manner as you have shown in Exhibit No. 2?

A. Yes sir, I will do so and attach it as Exhibit No. 7 to this deposition.

Q. When was the first investment made in Louisiana by the Cumberland Telephone and Telegraph Company?

A. When we purchased the property of the Great Southern Telephone and Telegraph Company, March 1st, 1898.

Q. What did you pay for the Louisiana property of the Great Southern Telephone and Telegraph Company?

A. I can not answer that off-handed but I will get it and file it as Exhibit No. 8 to my deposition.

Q. From what source did you get the money to make that first investment?

A. We paid for the property in capital stock of the Cumberland Telephone and Telegraph Company.

Q. In other words, you issued capital stock for the purpose of buying that property. Is that correct?

A. Yes sir.

Q. What is the next investment that you made in Louisiana?

A. After that date we began extensive investments and developments.

257 Q. Have you got a statement from what time these investments were made?

A. The books of the company would show.

Q. I would like to get that. In other words, I want to know each time that you issued capital stock for the purpose of extending your lines in Louisiana, and each time you made investments in Louisiana, the date and the amount of the property acquired?

A. We make investments in the state of Louisiana daily, every time we install a telephone we make an investment.

Q. From what source do you get the money to pay for that installation of telephones?

A. At the present time, I will say from the sale of stock, from borrowed money and from surplus funds, and I might add, reserves.

Q. Will the statement which you will furnish, show how much was taken from subscriptions to capital stock, how much from earnings and how much from the issuance of bonds or debentures?

A. It is impossible to state from what special source the money in Louisiana was derived, whether from the sale of stock, bonds, borrowed money, reserves or surplus. It came from the general treasury of the company.

Q. Has there been any increase in the capital stock of the company since February 1st, 1906?

A. There has.

258 Q. How much, and when?

A. February 1st, 1907, $3,362,400 additional stock was issued.

Q. Was it issued at par and paid for at par?

A. It was issued at par and what has been paid for has been paid for at par. The last payment on the subscriptions is not due until October 1st, 1907.

Q. Was all of it subscribed for at par?

A. It was.

Q. And what is the market value of the stock?

A. About $103.50 today.

Q. Was any portion of that capital stock issued in February 1907, apportioned to Louisiana for extensions and improvements?

A. It was not particularly apportioned there, but there have been extensions and improvements made in Louisiana since that date.

Q. How much?

A. About two hundred thousand dollars.

Q. So, out of this issue of $3,362,400 of stock on February 1st, 1907, two hundred thousand dollars of it was apportioned to Louisiana?

A. An explanation would make it clearer. We do not issue capital stock until our floating indebtedness has been incurred for the extension of the property, in Louisiana as well as elsewhere, and when it has become very great, then the capital stock is issued

259 and used mainly to pay off that floating indebtedness.

Q. Out of which $200,000 was for Louisiana?

A. No, I can not say that. I say that the amount expended since the capital stock was issued has been probably $200,000 but the larger part of the money that has been paid in for the subscriptions to capital stock has been used to retire obligations incurred previous to the date the stock was issued, for extensions made previous to the time the stock was issued.

Q. In other words, the capital stock is issued to retire floating indebtedness of the company previously made?

A. Yes sir.

Q. After the 1st of February 1906, up to the next issuance of stock in February 1907, how much was expended in Louisiana?

A. About one million dollars.

Q. What was that expended for?

A. Extensions and improvements.

Q. What do you mean by improvements?

A. The excess cost of different classes of property over the cost previously expended for the properties replaced with new construction is charged to capital account.

Q. Does that show the entire amount that was expended in the State of Louisiana for that purpose, during that period?

A. I am giving you figures without referring to my books, I am giving you an estimate, yes.

260 Q. According to your Exhibit No. 2 it appears that the investment you made up to June 30th, 1906, is $4,722,435.74 and for the period commencing June 30th, 1906 up to June 30th, 1907, is $5,394,145.43. Does that show the total investment made in Louisiana between those two dates?

A. Yes sir.

Q. How much of that difference comes from capital stock, and how much from surplus account. Can you state that?

A. I will say that practically all of it from capital stock.

Q. But, how much from surplus, you can not state?

A. No, I can not state.

Q. Does any of it come from surplus or reserve?

A. It comes from the general treasury.

Q. Which includes the surplus as well as the capital stock?

A. Includes surplus, borrowed money, capital stock, reserve and everything else.

Q. Mr. Smith, will you please furnish a statement showing the investments made in Louisiana from the beginning, in 1898 when the Cumberland Telephone and Telegraph Company entered the State of Louisiana, by yearly periods, from that time say from June 30th to June 30th, up to the present time?

A. I will do so and file it as Exhibit No. 9.

Q. Please give a statement of all exchanges acquired by your company from the Great Southern Telephone & Telegraph Co.

261 in the State of Louisiana, together with the amount expended for construction in these exchanges from the time of purchase to June 30th, 1907?

A. I will do so and file the same as Exhibit No. 10.

Q. Then, give a statement of each exchange acquired or built since the purchase from the Great Southern Telephone and Telegraph Company, with construction added, to June 30th, 1907?

A. I will do so and file the same as Exhibit No. 11.

Q. Give the same information as contained in Exhibits 10 and 11 with reference to the toll lines in Louisiana?

A. I will do so and mark the same Exhibit No. 12.

Q. Mr. Smith, isn't it a fact that the new construction put in now or within the past few years, is of a higher standard than the construction previously put in by the company?

A. Yes, for the reason that we have seen that it requires a very much higher standard, to withstand the immense depreciation. As an instance, we use creosoted poles now where we formerly used common poles.

Q. Therefore, from that statement, doesn't it follow that the amount for depreciation becomes so much less, by reason of the superior quality of the construction?

A. The amount of depreciation on each dollar might possibly be, except for the fact that the advancing cost of material continu-
262 ally causes the depreciation to cost more than the original construction.

Q. But, is not the depreciation or deterioration so much less, by reason of the high character of the new construction?

A. Well, I think that is an engineering question probably.

Q. What is the amount on hand now that has accumulated for reserved or the reserve for deferred maintenance?

A. As of date June 30th, 1907 it was $982,231.87.

Q. Your company purchased the property and franchises of the Peoples' Telephone Company of New Orleans on the 31st of January 1900, is that a fact?

A. I am not familiar with that.

Q. Don't your books show the purchase of the Peoples' Telephone Company's property in New Orleans?

A. I think not.

Q. Do you know, as a matter of fact, that the company has purchased that property?

A. I don't know that we bought the property outright.

Q. You don't know for what purpose the company bought this property?

A. I do not.

Q. Nor, do you know what was paid for it?

A. I do not.

Q. Nor, do your books show it?

263 A. Not to my knowledge.

Redirect examination.

By Mr. GRANBERY, for Plaintiff:

Q. I will ask you to state whether or not the slower the deterioation, owing to the better class of material used in the last year or two, is off-set by the increased cost of re-construction?

A. I believe it is.

Further this deponent saith not.

(Signed) H. BLAIR SMITH.

Sworn to when given, and subscribed to before me on this the 9th day of August, 1907.

[SEAL.] (Signed) BUFORD DUKE,
Stenographer and Notary Public.

264 *Louisiana Income and Investment.*

Net income for year ending June 30th, 1906.....	$266,249.56
Investment	$4,722,435.74
Per cent. of net income to investment.....	5.63%
Net income for year ending December 31st, 1906...	$273,938.75
Investment	$5,185,368.28
Per cent. of net income to investment.....	5.28%
Net income for six months ending June 30th, 1907..	$135,591.23
Investment	$5,394,145.43
Per cent. of net income to investment.....	5.03%

August 6th, 1907.
Exhibit No. 2.
Dep. H. Blair Smith.

265 *Louisiana Revenue Account for the Year Ending June 30th, 1906.*

Earnings:	
Exchange service.....	$866,748.81
Toll service	355,643.96
Miscellaneous	6,298.54
	$1,228,691.31
Expenses:	
General	$139,469.44
Operating	236,449.50
Maintenance	341,385.54
Depreciation	192,598.13
Instrument rental	52,539.14
	$962,441.75
Net revenue	$266,249.56
Per cent. to investment.....	5.63%
Construction	$4,732,435.74

August 6th, 1907.
Exhibit No. 3.
Dep. H. Blair Smith.

266 *Louisiana Revenue Account for the Year 1906.*

Earnings:	
Exchange service	$934,628.31
Toll service	382,676.74
Miscellaneous	8,441.05
	$1,325,746.10

Expenses:	
General	$158,150.47
Operating	253,250.23
Maintenance	400,167.67
Depreciation	184,787.48
Instrument rental	55,451.50
	$1,051,807.35
Net Revenue	$273,420.12
Per cent. to investment	5.28%
Construction	$5,185,368.28

August 6th, 1907.
Exhibit No. 4.
Dep. H. Blair Smith.

267 *Louisiana Revenue Account for Six Months Ending June 30th,* 1907.

Earnings:	
Exchange service	$512,832.52
Toll service	190,923.41
Miscellaneous	4,827.22
	$708,583.15
Expenses:	
General	$95,988.87
Operating	134,520.57
Maintenance	188,571.73
Depreciation	123,878.37
Instrument rental	30,032.38
	$572,991.92
Net revenue	$135,591.23
Per cent. to investment	5.03%
Construction	$5,394,145.43

August 5th, 1907.
Exhibit No. 5.
Dep. H. Blair Smith.

268 *Estimated Annual Increase in Revenue Contended for in Louisiana, Assuming the Same Number of Messages are Handled.*

Rentals and tolls from additional cable charge	$21,395.40
Toll from discontinuance of night rate	40,233.48
	$61,628.88

Equivalent to 1.14% on $5,394,145.43.
August 6th, 1907.
Exhibit No. 6.
Dep. H. Blair Smith.

269 The next witness, SAMUEL J. KEITH, called on behalf of Plaintiff, being first duly sworn, deposed as follows:

Direct examination.

By Mr. GRANBERY, for Plaintiff:

Q. You are a citizen of Nashville, Tenn., and President of the Fourth National Bank of Nashville, are you?

A. I am.

Q. Your bank has a capital stock of $600,000 and a surplus of $600,000?

A. Yes sir.

Q. How long have you been president of that bank?

A. Twenty five or twenty six years.

Q. I will ask you to state whether or not as president of that bank it has been your habit, in the line of your duty, to keep yourself advised of the prosperity or want of prosperity or the financial condition of the various institutions and enterprises in this section of the country?

A. It has, and particularly so of the people that have done business with the bank.

Q. What is the amount of your deposits, in round figures?

A. $5,200,000 today.

Q. I will ask you to state whether or not it is usual and customary or necessary, for industrial institutions to provide a

270 depreciation fund to care for their plant and properties?

A. Yes sir, very necessary, and generally observed by all well managed corporations.

Q. I will ask you to state whether or not the percentage of depreciation varies according to the character of the property involved?

A. It does.

Q. The less stable the property, the more the depreciation must be?

A. Naturally so.

Q. I will ask you to state whether or not any financial institution or well managed industrial enterprise can afford to pay out as dividends, from year to year, its entire net earnings?

A. It is impossible to do that and keep the proper-y up to its working value.

Q. I will ask you to state whether or not this depreciation fund is considered net earnings, or a part of the expense of conducting the business?

A. Part of the expense of conducting the business.

Q. I will ask you to state whether or not it is customary for financial institutions or industrial enterprises to use its net earnings as a reserve and put it back into its property from year to year, or to pay dividends to its stockholders?

A. All well managed concerns use it to keep the property

271 up, as before stated.

Q. Do they use the entire net earnings in that way?

A. If they provide for their stockholders a dividend, they can not use all the earnings on the properties that way.

Q. Why do they have to pay dividends to stockholders, if they have net earnings with which to do so?

A. Simply because the stockholders would not take stock in a corporation if they could not get any income. The object of people in taking stock in a corporation is to have an income on which to live.

Cross-examination.

By Mr. McCaleb, Jr., for Defendant:

Q. As I understand from your testimony, you simply testify that every corporation should always have a surplus on hand, after paying dividends to the stockholders?

A. They should not pay out everything they make; they ought to keep something for a reserve fund.

Q. In other words, there should be a reserve or surplus on hand to meet contingencies?

A. That is right.

Q. You do not testify as to what that surplus should be?

A. No, I can not say what that surplus should be, but it ought to be in proportion to their capital.

Q. That is a matter for the stockholders and directors of each company to determine?

272 A. That is correct.

Q. You are not prepared to state that where a large surplus has accumulated, and after a fair dividend has been paid to stockholders, that the company should be restricted to accumulating a large surplus from year to year?

A. The management of the company should be entirely in the hands of the directors of the company. They know more about it than anybody else.

Q. Now the surplus, after paying the dividends, where it is unusually large, the corporation should either increase the dividends or take out of these surplus earnings for the purpose of extension of the property. Is that correct?

A. The further extension of the property, they ought to hold the funds to do it with. I will explain myself further. If you will notice the statements of the various institutions in the North and East, the banks, particularly, they build up the surplus, they do not stop when they have reached double their capital. For instance, you will find some banks with two million dollars of capital and four or five million dollars of surplus. They use it for the stockholders all the time, bu do not declare it as dividends.

Q. Your testimony has reference as well to public service corporations, when the public is interested, as well as the stockholders?

A. Oh, yes sir.

273 Q. In other words, suppose corporations where the public is interested, and there is a sufficient amount after paying the dividends to the stockholders, a fair dividend on their stock, we will say, to put aside a surplus. Would not it be fair to the public that the charges made to the public, be reduced?

A. I think that should be left entirely to the management of the corporation or the property.

Q. In the public service corporations, you will understand that the people are equally interested in the management of the property as the stockholders. Now, if the stockholders receive a fair return on their investment is not the public entitled likewise to receive reductions in the charges made against them?

A. I don't exactly understand your question about the public. You mean the deposits in the bank.

Q. No, I mean the patrons of the public service corporation. In other words, Mr. Keith, don't you understand that with public service corporations, the public are interested vitally in the management of the company?

A. They are interested more or less, no doubt, but at the same time, I cannot change my views as to the management of the corporation. The people that put the money in it ought to be able to control it, and it ought to be left entirely with the corporation or its managers.

Q. And the public should not be entitled to any consideration?

274 A. They are entitled to consideration and get that when they patronize it and do business with it.

Q. Now, if after declaring a handsome dividend, there is left over likewise a handsome surplus. Would you be in favor of the public not receiving any return whatever from the management of that property?

A. They get the return in the service the company gives them. Now, it is a plain proposition, you take any public service corporation of that sort, when there is competition in it everywhere, they are going to make the rates to the public a fair proposition.

Q. Now, where there is no competition, where the company has a practical monopoly by its very nature?

A. Then, I take it, that it is not a compulsory business whether the people patronize it or not. They do not have to do so, if they don't want to do it.

Q. Have you ever had any connection with public service corporations, or with the Cumberland Telephone & Telegraph Company?

A. I have been a subscriber to the service of the company for twenty five years.

Q. In any financial way, as director or stockholder?

A. I am a stockholder now, have got a little stock in it.

Q. You have a little stock in the Cumberland Telephone and Telegraph Company?

A. Not much however. I think I have eighty shares and the company has done business with the bank for a number of

275 years.

Q. Have you ever had any connection with the management of this company or any public service corporation?

A. I have never been a director. No, I have had no connection as a director, or anything of that sort with the telephone company and I don't know what you call a public service corporation. I have stock in several little things in town.

Q. I mean by public service corporation one like a railroad com-

pany or a telephone company or even a street railroad company. Have you had any connection with those companies as manager or director?

A. I have been a director of the street railroad company at times, but I am not now.

Q. But you have been?

A. Yes, sir.

Q. Some years ago?

A. Yes sir, three years ago, but retired from the directory.

Q. That company is operating under contracts, I presume, with the City of Nashville. Hasn't it a franchise?

A. Oh yes, it has a franchise.

Q. There is a special rate fixed in those franchises for the service?

A. I don't know whether there is or not.

Q. Your testimony relates exclusively to banking and industrial enterprises other than public service concerns?

276 A. Generally, yes sir.

Redirect examination.

By Mr. GRANBERY, for Plaintiff:

Q. Is or not a telephone company security regarded as a stable or unstable investment?

A. Well, it is as stable as many others, but at the same time, it don't always stay at the same quotations, it goes down from $125 to $104.

Q. What is the difference between a telephone stock and most other industrial securities, and bank securities?

A. Well, the great trouble with the telephone is that its assets if it came to a liquidation, would not bring anything like what they will in a bank or any other commercial enterprise. The assets of the telephone company is largely in wires and poles, under-ground tunnels and one thing and another, that in case of liquidation could not be sold for anything like their cost.

Recross examination.

By Mr. MCCALEB, JR., for Defendant:

Q. Would not that likewise apply to railroads and telegraph companies?

A. Not so much.

Q. Why?

277 A. From the fact that the railroad and street railroad companies have nearer their value in their property than the telephone company has. For instance, you take down the wires and the poles and what can you sell them for.

Q. Suppose you take down the wires and poles of a telegraph company, would not the result be the same?

A. It possibly would.

Q. If you were to liquidate a railroad company, would not the rails and cross ties and other properties of a railroad company, such as bridges, etc., would not they be equally worthless?

A. Probable would, but as a matter of fact there is hardly ever a railroad liquidated, and I don't know that telephone companies are liquidated, but at the same time it does not look like to me the assets of a telephone company would compare with that of a railroad company.

Q. In cases of liquidation would not the lines of the telephone company be used by any other purchaser where they are not dismantled, as in the same way as the vendor had used them?

A. Might be, provided you could find a buyer for them.

Q. Would not that apply likewise, provided you could find a buyer for a railroad plant?

A. I suppose it would.

Q. Isn't it a fact Mr. Keith, that the stock of all railroad and telegraph and telephone companies throughout the United States, are not as stable as the stock of banks?

278 A. Yes sir.

Q. In other words, the stock of the bank is considered more stable than that of a telephone company?

A. Yes sir.

Q. And is not the stock of a bank also considered more stable than that of a railroad?

A. Yes, less fluctuations.

Q. And these fluctuations in the stock of public service corporations, such as railroad companies, telephone companies and telegraph companies, are liable to be manipulated on the different exchanges for causes other than what takes place in the management of the company?

A. Oh yes, manipulations of all railroads on the market in New York, is handled like a foot-ball.

Q. And isn't it also a fact Mr. Keith, that the quotations of stock on the several exchanges are likewise affected by the condition of the money market?

A. Oh, yes sir.

Q. And that also applies to bank stocks, doesn't it?

A. Yes sir to a certain extent.

Further this deponent saith not.

(Signed) SAMUEL J. KEITH,
[SEAL.] By BUFORD DUKE,
Stenographer & Notary.

Sworn to when given, and subscribed to before me on this the — day of August 1907.

———— ————,
Stenographer and Notary Public.

279 The next witness, JOHN T. LANDIS, being first duly sworn, deposed as follows:

Direct examination.

By Mr. GRANBERY, for plaintiff:

Q. You are a citizen of Nashville, Tenn., and President of the Landis Banking Co.?

A. Yes sir.

Q. How long have you been president of that institution?

A. Since 1896.

Q. I will ask you to state whether or not during the period of your present position, you have made it your business to inquire into and acquaint yourself with the affairs of industrial and financial institutions in this part of the country?

A. Yes sir, I try to keep posted.

Q. I will ask you to state whether or not it is usual and customary for all industrial enterprises, when properly managed, to set aside or provide for the depreciation of their property out of the earning of the company?

A. Yes it is usual among well managed corporations.

Q. I will ask you to state whether or not this depreciation fund is net earnings or part of the expenses of conducting the business?

A. That is part of the expenses of conducting the business.

280 Q. Can you consider them profits until you have taken out of your earnings, this depreciation fund?

A. I don't see how you can have any profits until after you have taken out the depreciation that should be charged off in the business.

Q. I will ask you to state whether or not that depreciation is any fixed sum, or whether it varies according to the character of the business?

A. It varies widely.

Q. I will ask you to state whether or not a public ser*g*ice company or an industrial enterprise or financial institution, prudently and properly managed, can afford to pay out in dividends every year, from year to year, its entire earnings?

A. It can not, by any means.

Q. It is customary and usual for them to do so?

A. Not among well managed corporations. I should think it would only be a wild-cat company, as we call them, that would do that.

Q. I will ask you why it cannot be done safely?

A. Because there are so many unexpected losses in business and so many contingencies which any sound business man knows you have to meet.

Q. Is it any different from the case of a man on a salary who spends every year, every dollar*s* of his salary?

A. I look at it pretty much the same.

281 Q. In other words, some sickness or unfor-seen accident may happen, which means, if he spends his entire income, he will not be prepared to meet it?

A. It is practically the same as a man living up to his full income for a corporation to pay out all it makes. In fact, I don't know of any corporation that is considered conservative which does anything of that kind.

Q. Is it customary and usual for financial institutions and industrial enterprises, if they are financially able to do so, to pay dividends year by year, to its stockholders?

A. Yes sir.

Q. Why is that so, and why do they not use their entire earnings to put back into the business. In other words, why do they pursue the policy of paying dividends?

A. You cannot interest capital in a business if there are not prospects of paying dividends. You could not interest capital if there were not going to be some returns on the money invested. It is for that reason that dividends are paid.

Q. Are you able to state whether or not a telephone stock is regarded as a stable or unstable security in the markets of the country?

A. Well, generally speaking, telephone securities are not looked upon as being as stable as other securities.

Q. Why is that so?

A. Well, that is a little difficult to answer.

282 Q. State wherher or not it is customary or usual for savings banks, trust companies and other like institutions to invest any money or trust funds in telephone securities?

A. No, they do not usually invest in telephone stocks.

Q. In what do they invest?

A. Well, savings banks would invest money in securities of a corporation whose assets would be available for some other purpose than for which that particular corporation used them.

Q. Why do they make this distinction?

A. You mean, why do they make this distinction between telephone and other securities?

Q. Yes and other corporations having assets that might be turned into some other use?

A. Savings banks (or investors from that view point), would make the distinction for the very reason that if one had to realize on the assets of a telephone company, there is not anything else they could be used for. In fact, the salvage, if I might call it that, would be so little, it would not amount to anything. I was going to say awhile ago, in further reply to the question just previous to this which you asked me, that one reason why telephone stocks are considered unstable, is because the public generally do not give that consideration to the fact of the establishment of a telephone business of its good-will, they do to many other businesses, and

283 they look upon the company as being largely a matter of poles and wires up in the air, that is the most often expressed idea I hear against the stability of the telephone. Of course, everybody knows, who knows anything at all about the telephone, that the life of a telephone property is probably shorter than that of almost any other property. As a matter of fact, it has to be renewed oftener.

Cross-examination.

By Mr. McCaleb, for defendant:

Q. You are the President of the Landist Banking Co.?
A. Yes sir.
Q. What is the capital of your concern?
A. Fifty thousand dollars.
Q. And what is the surplus? Does it have a surplus?
A. Well, yes, I will say fifty or sixty thousand dollars.
Q. What dividends does your company pay?
A. Well, my company is a close corporation. I own the Landis Banking Co.
Q. Do you pay a dividend?
A. No, not in the sense of a regular company you have in mind.
Q. Suppose your company was a regular company, what dividend could you pay with a surplus of fifty thousand dollars and a capital stock of fifty thousand dollars?
284 Q. Do you mind taking some other company.
Q. Well take some other company?
A. I am interested in the Fourth National Bank which has a capital of six hundred thousand dollars and a surplus of six hundred thousand dollars.
Q. What dividends does it pay?
A. Ten per cent.
Q. Would you consider a company with a capital of eighteen million dollars and a surplus of three million dollars, paying a dividend of five per cent., would you consider five per cent. to be a fair amount?
A. You mean would five per cent. be considered fair to the man with money in it?
Q. Yes, would not that be a fair return?
A. You are talking about stock in a——
Q. Yes, in a telephone company?
A. No sir, it would not.
Q. What would be?
A. Well perhaps it is better to not just express this as my opinion without saying what basis I have for this opinion. I will tell you, the American Telephone and Telegraph Company pays eight per cent. and its stock is selling for $107, that is selling so as to pay about seven and a half per cent.
Q. If a company, say like the Fourth National Bank, pays ten per cent. on its capital stock of six hundred thousand dollars and a surplus of a like amount, don't you think the proportionate
285 return on a company of like character, banking company of like character, which would have a capital of eighteen millions and a surplus of three millions, should be considered as considerably less?
A. That the return should be less?
Q. In other words, that the dividends should be less?
A. Do you mean, that the stockholders should be satisfied with less?
Q. Yes?

A. No sir I do not.

Q. You think he ought to get more with less surplus, in proportion to the character of capital?

A. You know an investor expects dividends in accordance with the risk that he is supposed to take. Now, if you will permit me, I will finish what I started to say awhile ago. I was going to say a man can invest money now on a basis of seven and a half per cent. in telephone stock, if he wishes to do so, and in what is called the company that controls the telephone business more generally than any other company. Now then in the Fourth National Bank, a man can invest money to pay about four and a half per cent. net. That is in this town, free of taxes of two and a half per cent. practically and that would be equivalent to seven per cent. that he is getting net. Nashville & Decatur Railroad stock, nets about four per cent. and is free of taxes. If you add the taxes on it, that
286 would be about six and a half per cent.

Q. Let us take for example the Fourth National Bank. What are the quotations on that stock on the market or the broker's board prices?

A. Well now, the quotations, they may vary, because we don't have any stock exchange here, but $230 is bid for it.

Q. Therefore, if I was to buy that stock of the Fourth National Bank and pay $230 and it paid a dividend of ten per cent., leaving out the taxes, what would be the net return to me on that stock?

A. I would have to figure that.

Q. Wouldn't it be less than five per cent?

A. Yes sir.

Q. And the public invests in those securities at less than on a five per cent. basis of the market value of the stock?

A. Yes sir, but there is one thing you are not giving due consideration to, and that is that it is a National Bank and the taxes are paid on that stock by the bank. That is why people pay so high for these bank stocks, because they do not have to turn this in for taxation, it is tax free. In other words, it would be equal to $2.40 added on its return here. If you get five per cent., we will say it pays five per cent. for the sake of argument, then, if you are exempt from paying 2.40 additional for taxes, that is 7.40 per cent. it is netting you. That is why the stock sells so high. On its actual book value, the stock would not sell for over $200.

287 Q. If the stock is worth $200 and after all the taxes were paid to the state and the municipality and it paid a dividend of ten per cent., it would still net the stockholder five per cent. on what he paid for the stock at $200?

A. Yes, if the stock were bought at $200 and it paid ten per cent., it would be on a five per cent. basis.

Q. So, you consider five per cent. would be a fair return in a case of that kind?

A. Well, it all depends on conditions. I only consider a thing cheap relatively. It depends altogether on what you can do with your money somewhere else. With money like it is now, people have to get more on the investment than it has been bringing.

Q. In other words, the money market is a little strained?

A. I don't mean to say that this is temporary. The large Life Insurance Companies and financial institutions that had to do with making interest rates for a term, the rates on investments, a short time ago thought we had gone to a three per cent. interest basis and all the trust accounts and investments of that kind were figured on that interest return, while now it is found that you can buy those very same investments to net you as much as five per cent. In other words, a man who invested $100,000 and got an income of $3,000 can invest that same capital now and in practically the same
288 kind of securities and get five thousand dollars. That shows there is a difference of sixty per cent. in income return. So, I say, taking the Fourth National Bank or picking out any one stock, it is not fair for me to use that as a basis of expressing an opinion as to what would be a fair return on the money. I would have to speak from a general standpoint. As I said awhile ago, an investment is cheap or dear, relatively.

Q. Now, would you consider a company doing business for over twenty years and paying four per cent. to its stockholders and putting aside a handsome surplus from year to year, increasing its surplus from year to year, a stable company. Would you consider it stable, financially, and I am, at the same time, assuming that its management has been conservative?

A. You mean by stable, would I consider it a sound company?

Q. Yes?

A. Do you refer to the Cumberland Telephone & Telegraph Company.

Q. I am referring to the companies in general. Take a railroad company, for instance?

A. Ordinarily the longer a company has paid dividends, the better repute it places that company in.

Q. In other words, it makes it more stable, the people have more confidence in it?

289 A. But, if you take an industrial company that has run twenty years, and does not pay in all that time but four per cent. to its shareholders, I do not count that much of a company.

Q. If it increases its dividend from year to year, suppose it increased it to five per cent.?

A. I would look on it more favorably.

Q. And if it increased to six per cent., more favorable still?

A. Yes sir.

Q. And seven per cent., more favorable still?

A. Yes sir.

Q. You were asked questions relative to depreciation. What do you mean by depreciation?

A. To what kind of business do you refer.

Q. Take the banking business, have you any depreciation in the banking business?

A. Well, you would hardly call it depreciation in the banking business. The surplus that is maintained by a bank, is for contingencies, contingent losses, but you could hardly call it depreciation.

Q. Now, is not the surplus of nearly every company put aside for contingencies?

A. Yes, if it is well managed.

Q. And that is what you understand by depreciation, surplus?

290 A. No sir.

Q. To meet some contingency or some loss?

A. No, I understand by depreciation this. Let us take an every day illustration. If I have an automobile that cost $2500 and I run it this year, then if I go to insure that automobile at the end of a year, I would have to insure it for less than the original cost, because of the wear and tear on it and that wear and tear would represent the depreciation.

Q. Suppose you were to maintain that automobile, reconstruct it and keep it in the same condition it was when you purchased it, to be used for the same purposes, would not the depreciation be much less?

A. Oh yes, it would be much less.

Q. Your answer refers then merely to cases where you have an automobile and from constant wear and tear it becomes practically useless at the end of a certain time?

A. No, not only to take into account the item of depreciation, I don't say you have to say it is worn so it becomes entirely useless. Depreciation is merely the fact of its growing less in value by reason of its wear, or, in the case of a telephone company, you might say the exposure to the weather or elements.

Q. Would not that also apply to the locomotives of a railroad?

A. Yes sir.

291 Q. And also to the lines or track?

A. Yes sir.

Q. And rails and cross ties?

A. Yes sir.

Q. And other railroad properties?

A. Oh yes sir.

Q. Is not the depreciation of a railroad property very great?

A. Yes sir, depreciation is very heavy on railroad properties.

Q. And don't railroads put aside surpluses to meet just those conditions?

A. Yes sir.

Q. Conditions of maintenance and reconstruction?

A. Yes sir that is right.

Q. Does not the market value of the different stocks on the stock exchanges, depend to a considerable extent on the condition of the money market?

A. That has an influence on it, yes.

Q. Has not it a material influence?

A. Very material.

Q. And take the case of railroads that are quoted on the New York stock exchange, is not the fluctuation subject to the manipulation of operators on the exchange where there is not even any reason for the fluctuations?

292 A. Well, I cannot say that fluctuations take place without any reason or cause, but they do take place without any apparent cause, very frequently.

Q. Isn't that subject to the manipulations of operators on the exchange and is not it recognized all over the country?

A. There are wide fluctuations made by manipulations, there is no doubt about that.

Q. Is not it well known that the stocks of the various railroads drop in a day ten or fifteen or twenty dollars from the manipulations of operators?

A. Yes sir.

Q. And without any apparent cause?

A. Without any cause that is apparent to the public. Of course, people who are manipulating stocks, have something hidden that they can spring at the right time to help them manipulate.

Q. Doesn't that manipulation also come about from the buying and selling of stocks. In other words, where a large amount of stock is thrown on the market. Doesn't that have the effect of putting down that stock?

A. I would answer that by saying, buying and selling stock comes about as a result of manipulations, or is a part of the manipulations. Manipulation is not a result of buying and selling stocks, but buying and selling stocks is the result of manipulation.

293 Q. If I was to throw on the market one half of the stock of a railroad company, suppose I owned half of the stock and threw it on the market for sale, would not that have the effect of bearing down the market value of the quotations of that stock?

A. Certainly.

Q. That may come about from the fact that I need the money?

A. Yes sir.

Q. Or the proceeds from that stock?

A. But if you really needed the money and wished to make a straight sale of a half interest in a railroad corporation, it would be very unwise to throw it out on the market, and there is where your manipulation would come in, to bring about buying.

Q. Where there are so many owners of that stock, hold that stock on margins, they being compelled to sell that stock for the purpose of closing out, would not that affect the quotations of the stock?

A. Yes, if it were a stock that was largely held in a speculative way. Of course that would not apply so much to a stock that is not held speculatively.

Q. You testify that the reason why you would not consider a telephone stock as a good investment as a bank stock was because in case of the liquidation of that company, the property

294 being in the air, practically, would not be worth the original cost of the investment. Now, suppose the telephone company was to find a purchaser for its plant, who would operate it in the same way as the vendor company would that answer likewise refer to that condition?

A. I think such a condition as would make it necessary for a telephone company to sell out, would absolutely make it impossible

for some other person or corporation to have any use for the property.

Q. No man is going to buy something unless he expects to make money out of it?

A. That is why I say any reason that may arise to make a telephone company sell out, would prevent a buyer coming in the market, because he would not want it for the telephone business. If it is desirable from a business standpoint to go in and buy a telephone property, then the company that has already got that telephone property will want to run it itself.

Q. Suppose they could get more for it than what the stock is worth on the market?

A. You are just asking me to suppose that?

Q. All these are hypothetical questions?

A. You want me to suppose that a telephone company could sell its property to someone else for more than it is worth to it. Then, in that case, I suppose you would find a seller.

295 Q. Would not this salvage to which you refer, apply to nearly any corporation that has property, consisting of property of that character, would not it apply to every other corporation?

A. I would have to answer that yes and no both. A telegraph company would be practically the same as a telephone company, that is, the salvage would be, you might say, the same, but then, if you go into railroad companies it is quite different, those conditions, they differ in different companies on different characters of business. After you have used a telephone wire, it is very nearly impossible to use that wire any more. It would cost as much, probably, to wind it up as it was worth.

Q. Would not that apply likewise to telegraph companies?

A. I think it would apply about the same to telegraph companies.

Q. Do you know what the dividends of the Western Union Telegraph Company is?

A. I think it is five per cent.

Q. Do you know the market value of the Western Union stock, approximately?

A. It is about eighty.

Q. What is the American Telephone and Telegraph Company stock worth?

A. $107.50.

296 Q. What is the dividend they pay?

A. Eight per cent.

Q. What about the Postal Telegraph Co.?

A. I am not familiar with the dividend on that.

Q. Have you ever had any experience in the management of a public service corporation?

A. No sir.

Redirect examination.

By Mr. GRANBERY, for plaintiff:

Q. The Fourth National Bank pays ten per cent. dividends, does it earn more?

A. Yes sir.

Q. Then, the market value of a stock depends not alone upon the dividends, but upon its earnings?

A. Yes sir.

Q. If it paid ten per cent. and earns less, it would be worth very much less on the market?

A. Yes sir.

Q. Now, about Nashville and Decatur Railroad Co. stock, what is that selling at?

A. $187 and $188.

Q. At the present time?

A. Yes sir.

Q. What dividend does it pay?

A. Seven and one half per cent.

297 Q. I will ask you to state why its market value is so high?

A. The dividend is guaranteed for ninety nine years by the Louisville & Nashville Railroad Co.

Q. And is that dividend regarded as absolutely certain by the investing public?

A. Oh, certainly, that is what makes the stock sell so high.

Q. Coming back to the automobile proposition. Do you own any?

A. Yes sir.

Q. Have you had many years' experience with them?

A. Yes sir, ever since they began on them.

Q. I will ask you to state whether or not you regard the current repairs as depreciation on your automobile?

A. No, I do not.

Q. Is there a depreciation over and above the current repairs that you put on it?

A. You mean to say, does the depreciation exceed the amount I spend in repairs.

Q. I don't care whether it exceeds it or not, but is there depreciation in addition to the ordinary repairs?

A. You mean, after I repair it, that it does still depreciate?

Q. Yes?

A. Oh yes, it is still depreciated.

298 Recross-examination.

By Mr. MCCALEB, for defendant:

Q. Mr. Landis, the seven and one half per cent. dividend that is paid by this Nashville & Decatur Railroad Co. that you testified about, is quoted at $188?

A. Yes sir.

Q. What is the net return to the stockholders on that stock?

A. You want to not lose sight of the fact that it is tax free here.

Q. What is the net return to the stockholder at $188?
A. A little over three and a half per cent.
Q. And you say that this stock is guaranteed by the Louisville and Nashville Railroad Company?
A. The dividend is, yes sir. It puts the stock more in the nature of a bond investment than anything else, by reason of the guarantee of the Louisville & Nashville.
Q. There is nothing behind it but the guarantee of the Louisville & Nashville Railroad Company and the property itself?
A. That is all.
Q. Are there any bonds out on the property of this company?
A. No sir.

299 Redirect examination.

By Mr. GRANBERY, for plaintiff:

Q. This stock is free from taxes, is it?
A. In Nashville, yes sir.

Further this dependent saith not.
(Signed) JOHN F. LANDIS.

Sworn to when given, and subscribed to before me on this the 8th day of August, 1907.
[SEAL.] (Sig.) BUFORD DUKE,
Stenographer and Notary Public.

300 LELAND HUME, the next witness called, being duly sworn, deposes as follows:

Direct examination.

By Mr. GRANBERY, for the plaintiff:

Q. Mr. Hume, you are a citizen of Nashville, Tennessee, and General Manager of the Cumberland Telephone & Telegraph Company, the plaintiff?
A. Yes sir.
Q. How long have you been General Manager?
A. About a year and a half.
Q. What was your position with the company prior to that time?
A. Secretary, and Assistant General Manager.
Q. How long did you occupy that position?
A. From July 5th, 1890.
Q. What have been your principal duties during the time you have been Assistant General Manager and General Manager of the Company?
A. To look after the construction and maintenance of the plant.
Q. Have anything to do with operating it?
A. And operating, yes: construction, maintenance and operating.
Q. I will ask you to state the reasons for what abuses if any exist, or did exist, with reference to the use of the half rate
301 at night, in the toll business?
A. Well, we found, in the handling of the business, and in

the run of time, a great many irregularities and abuses in this feature of the service; we found that a very large amount of business that should logically be handled in the day time was put off until the early hours of the night, and as a consequence, the company found it vastly more difficult to get information and to locate the parties called for, which took up the time of the lines and also threw a congestion on the lines for the early hours of the night that they were unprepared to meet, and by thus postponing of the business until the so-called night rates were operative, the investment in the lines in the afternoons was very largely idle but the day force of operators was necessarily kept at the board just the same.

Q. I will ask you to state whether or not the plaintiff has been sending and continues to send telegrams at night like the telegraph companies, or in other words, written messages, to be delivered the next morning at business hours?

A. Yes sir, we are doing that, and have been doing that right along?

Q. Is there any intention or purpose to change that?

A. There is no intention on the part of the company to make any change in this practise. I would say right here that the great difference in undertaking to handle telephone messages and telegraph messages at the night rates is in this, that the customer
302 hands to the telegraph company a message to be sent at night rates, which means that the telegraph company puts that in its files and handles the message any time during the night or the early morning following that suits its convenience, and if the delivery is made during the forenoon of the next day, the obligation of the telegraph companies have been met. If, however, you go into the telegraph office at night, and wish to have a message sent as soon as it can be handled and delivered, there is no such thing as a night rate, or in other words, the night rate is found to be exactly the same as the day rate.

Q. Do telegraph companies take messages after twelve o'clock at night, to be delivered next morning, at half rates?

A. After twelve o'clock at night any messages that are delivered, if you can find an office open, is taken at the day rates, and not at the night rates.

Q. What do you mean by finding the office open? What is the practice with respect to telephone companies and telegrap- companies in Louisiana in this regard?

A. Practically all of the offices of the telegraph companies in Louisiana close either early in the evening or before 12 o'clock at night, New Orleans and Shreveport being the only exceptions. The telephone company can be reached over any of its telephones connected with any exchange at any hour, day night or Sunday.

Q. Mr. Hume, did this company put into effect the day rate at night in any part of its territory, if so, when, and what has been the result?

303 A. On the 1st of August this year the day rate for all oral messages sent at any hour of the day or night was put into ef-ect over this company's entire system with the exception of the

State of Louisiana, and since that time I have watched the matter very closely, and find that we are handling the business with fewer complaints, fewer delayed messages, and fewer messages that have to be cancelled on account of inability to reach the parties called for; the number of messages handled in the afternoons has increased, and the number of calls made at night has decreased. The volume of messages shows a normal average of records of past months.

Q. Has there been any complaint from the business interests or from the Boards of Trade or exchanges or different business organizations throughout the territory?

A. We have not known of or received a single complaint along this line up to this time.

Q. Mr. Hume, it is generally believed that the telephone facilities in the State of Louisiana are a public necessity to the business interests of the State, as well as for social purposes; will you state why this is so?

A. Well, it is unquestionably due to the fact that the telephone is the most convenient, rapid and satisfactory means of communication that the world has ever seen, and as a consequence, it is but natural that the public is using this new tool in the commerce and in the social life of Louisiana and all other states.

Q. What about the cost to the public compared to the value
304 of the service obtained by the public?

A. As far as the cost of telephone service is concerned, when it is compared to the value of it, it is by far the cheapest public service that is rendered at all. In other words, the telephone, for what it accomplishes, gives more for the money charged for it and paid by the customer than any other service that he gets.

Q. Mr. Hume, is there any demand upon the part of the public in Louisiana for better service and more facilities and better facilities?

A. Up to this time the great hue and cry has come to us from all parts of Louisiana for additional telephone facilities, and we have been led to believe that the people of the State were extremely anxious to have the telephone systems developed to a point of saturation. Up to this time you might truthfully say that the telephone has touched at the high points; the true development would not be complete until the lines would permeate and radiate from all the smaller towns to the rural sections supporting the towns, and until all such towns were connected together by one system affording satisfactory long distance connections with all points in the State and outside of the State as far as the public might have occasion to communicate and do business, and believing this all to be a fact, it has been the constant and earnest effort of this company to meet that demand, and in doing so it has put forth every effort to secure the necessary money to develop this business.

305 Q. State whether or not this company or any other company has developed the entire State of Louisiana, and if not, is there any part of the State partially or totally undeveloped?

A. Well, there is very little of the State that is develope- from a telephone standpoint; the interior sections, comprising by far the

major portion of the State, is hardly touched with telephone lines as yet. This answer applies to all the telephone lines in the State, irrespective of ownership.

Q. What part of the State principally is undeveloped, more so that the other parts of the State?

A. Well, the central western part of the State is very largely undeveloped, and the parts away from the lines of railroad have been touched but lightly anywhere.

Q. Have you, as General Manager, had requests, few or many, to develop the telephone business in that State, in the last two or three years and down to the present time?

A. We have been receiving requests right straight along, and many of them, for the past five years, for telephone extensions and development, in the State of Louisiana, and the work that we have done already in trying to meet the demand, has caused communities not reached by the lines and anxious for them, to become the more anxious and the more insistent as they have found the neighboring communities being served.

Q. Has there been any demand, and is there any demand from the patrons in Louisiana to substitute better character of
306 equipment and service than has heretofore been given, at different places?

A. The use of the telephone by the public opens up so many new avenues for the telephone service, and the public lean and rely on the service more and more, and to an extent that causes any interruption to the service to be taken note of, and on that account, we do receive from the patrons of the company the most urgent appeals to do anything and everything we can to bring up the standard of the service to a higher point of efficiency and reliability, and to that end the company has given a great deal of time, study and investigation, and has consulted the best electrical and construction engineering talent to be found anywhere, and has on its own account and on its own pay-rolls a large force of capable and expert experienced telephone construction engineers and electrical engineers, who give absolutely all their time to studying just these various problems of service and care of plants.

Q. Is there anything in the request for the substitution of copper metallic circuits for iron circuits?

A. Yes, the call for the substitution is due to the increasing desire of the public to use the lines at longer distances than they first made demand for when beginning to use the service.

Q. Explain the difference between the use of copper and iron wire.

A. As a consequence, we find it desirable and necessary to
307 try to meet this demand, for the reason that the transmitting of the human voice over copper wires enables one to hear better at a long distance than over the iron wire, or in other words, the limitations of the iron wire are met within one hundred miles, or such a matter, whereas the large copper wires can transmit a thousand to fifteen hundred miles.

Q. Even in short distance, is there any difference between the

clearness and distinctness of the copper wire and the iron wire service?

A. Yes, the copper wire gives a better result even on short toll lines.

Q. Of course you are familiar, Mr. Hume, with the prices of copper wire in the markets of the country, where this company has to buy its supplies; I will ask you to state what is the difference in copper wire at the present, and for the past year, over the former three or four years?

A. Copper wire, for the past year or more has been at 24 to 26 cents a pound; iron wire in the same time has been from 4 to 5 cents a pound.

Q. Compare it with present prices and formerly.

A. Prior to the time mentioned, copper wire could have been had at 13¢ to 16¢ a pound, and at times it has been lower than 13¢.

Q. I will ask you to state whether or not there has been any increase in the prices of lead and other materials used in switchboard apparatus, metals of different kinds, in the last year or two?

308 A. There is scarcely any metal or any equipment or apparatus that we have to use in the conduct of our business in the construction of new lines, and in the maintenance of the plant, that has not increased in price very materially within the past three years. This is especially true when it comes to poles, copper wire and cables and lead and electrical equipment.

Q. What kind of poles are you using in Louisiana, at the present time, and have you been using for the last year or two?

A. Creosoted poles.

Q. Why?

A. For the reason that it is not practicable to get anything else; we formerly used heart sawed cypress; at that time we could purchase the cypress at $13 to $15 a thousand feet, and now the price for that same timber ranges from $50 to $60 a thousand feet. We also used, in earlier times, red cedar poles, which long experience has proven to be a highly desirable pole, but it is no longer possible to get any of this timber, the timber forests having been cut out to a point where there is none offered.

Q. So that it is not a question of choice, but a question of necessity that makes you use creosoted pine poles now?

A. Absolutely. If we could get the other poles we would choose to use them, for we know by experience of the other poles, and the creosoted pole is an expensive first cost pole, and neither this company's people nor any others that we have been able to find

309 have any positive knowledge as to the durability of the creosoted timber. The railroad bridge builders have perhaps more experience than any other class of men with creosoted timber, and the opinions of these men vary greatly.

Q. Mr. Hume, I will ask you to state whether or not the price of labor in the State of Louisiana, the labor which you have used, and which you are of necessity compelled to use, in the construction, maintaining and operating the properties of the company, has increased in prices in the last few years, or decreased?

A. It has increased, on an average of at least 25 per cent. I would

like to state right there, that it costs us more to operate the plants in Louisiana than anywhere else, for the reason that there is a State law which practically forces three shifts of operating positions a day. The law limits the number of hours that any operator can work per week, and the practical operation of that is to increase the operating expenses.

Q. Mr. Hume, I will ask you to state whether or not you inspected the properties of the Great Southern Telephone & Telegraph Company at or before the time that this company purchased them?

A. I did, very carefully.

Q. I will ask you to state whether or not you have been familiar with all of the construction work of the plaintiff company in Louisiana from 1898 down to the present time?

310 A. I have; I have had direct supervision, and been held responsible for all of it.

Q. I will ask you to state whether or not those properties purchased from the Great Southern Company were worth what the company paid for them?

A. They absolutely were worth every dollar paid.

Q. What basis did the Great Southern sell to this company on?

A. Fifty cents on the dollar of stock.

Q. Was that the actual cost to them of that property, or was any of that stock fictitious?

A. Well, judging from the plant, I would say that the stock represented about what the plant had cost them.

Q. Now I will ask you to state whether or not the construction of the company's plants and lines in Louisiana, from that purchase down to the present time, have been made as economically as it was possible for the management to make them?

A. They have.

Q. I will ask you to state whether or not in your opinion, looking back upon the years of work, in the light of experience, whether or not, in your opinion, these plants could have been constructed by any one or any set of men for appreciably less than they cost this company?

A. I am sure that it could not have been accomplished; in the handling of the business it has been made a point to constantly keep posted on what was being done by other companies, and both

311 large cities and small cities and country districts have been visited, and the construction methods of other companies over the country have been watched carefully, and I am satisfied that what this company has invested in the way of plants has been judiciously and economically invested as could be possible if we had to operate to go over it now.

Q. What, in your opinion, would it cost this company, or any other company, to reproduce these properties at the present time?

A. Owing to the higher prices of construction material and higher prices of electrical equipment, and the higher price of all labor, I do not believe that the work if done now could be done within twenty-five per cent. of what it cost when it was done.

Q. Mr. Hume, are you familiar with the question of depreciation, with relation to a telephone property?

A. I am.

Q. I will ask you to state what per cent. of original cost does this company set aside for depreciation?

A. About eight per cent.

Q. I will ask you to state whether or not, in your opinion, that is a sufficient amount to provide for the depreciation?

A. At present prices, I think that nothing less than eleven per cent. would be proper and safe, and that is the contention that I have made for some time.

Q. I will ask you to state whether or not the amount of
312 the depreciation to be set aside varies with the character of the plant you have under consideration—I mean by that not different telephone plants, but a telephone property or a sugar mill, or a cotton gin, or other industrial enterprises?

A. The amount necessarily varies with the kind of plant, machinery or equipment that you are dealing with.

Q. State whether or not the present depreciation for a telephone plant is higher or lower than most industrial enterprises?

A. Well, it is higher, due largely I think to the fact that so much of it is exposed to the elements in a way that we cannot protect it, and so much of it is in the hands of people who feel no responsibility whatever for the care of the equipment—a man feels that if his telephone instrument becomes damaged, that all he has to do is to demand of the telephone company a new instrument and he gets it, and as a consequence, it is not cared for in that same way that a delicate piece of mechanism of the kind that a telephone is would be cared for by the owner thereof.

Q. I will ask you to state whether or not the telephone art has developed to a point where the appliances and apparatus used has settled down to a permanent basis, where telephone companies can figure with some degree of confidence upon any apparatus purchased being used for its life or until it becomes worn out, without having to be replaced with a different type or a newer thing in the art?

A. Nearly everything in the way of electrical equipment
313 and appliances that are used in connection with rendering telephone service becomes obsolete in the course of a very few years, and is necessarily replaced, not because it is worn out, but because the public demand something newer and later. This can well be illustrated right at Baton Rouge. We purchased from the Great Southern Telephone and Telegraph Company a small plant that had a switch board that was in good condition, but it was the grounded line type of switch board; this company went to work and substituted what was then the latest and most up to date thing in the way of a telephone switch board, called the Multiple Metallic Magnete Switchboard, which cast aside the old board, which was junked—the best thing that we could do with it; and now, after a period of some six or seven years, the metallic board just referred to is being replaced by a common battery visual signal type of board, which necessitates the substitution of entirely new instruments at the subscribers' stations; and right at this time electrical engi-

neers are discussing and figuring on the possibility of a radical change in the switch-boards used in connection with rendering the service in the larger cities.

Q. I will ask you to state whether or not this company's affairs, so far as you are aware, have been conducted economically and prudently with respect to its receipts and disbursements?

A. Yes, I am sure of that; the greatest precaution is taken to make the purchases for the company at the most favorable
314 periods and on the best terms, and the management makes every effort to take care of the property and administer it in a way satisfactory to the customers, and with a view of protecting the investment and administering the affairs of the company in a business like economical manner.

Q. I will ask you whether or not the company maintains a purchasing department or a purchasing agent, for the purpose of taking advantage of every cut in the market he can find, and buying in small or large quantities, material to be used in the entire system?

A. The company has had such a department for many years past, and all purchases are made through this department.

Q. Do you know of any expense that has been incurred by the company that could have been eliminated with due regard to caring for the property and the service?

A. None that we are not forced by law to submit to.

Q. I will ask you to state whether or not by reason of maintaining this purchasing agent department — has been enabled to purchase its supplies of materials more economically than it otherwise would?

A. It has.

Q. Do you have any trouble, or have you had for many years any trouble in getting the right kind of labor or employees to conduct the business and handle it?

A. That has been one of the most difficult problems that we have had to deal with.

Q. Why is that?

315 A. Well, it is due in some measure to the fact that the country for several years past has been enjoying an era of prosperity; people could get work without much effort, and as a consequence, labor has been very independent. To operate our plants, it is necessary to maintain a military discipline, and as a result we have had at time great difficulty in securing the kind of skilled labor that is required; then when it comes to the question of extending the plant, building new lines and new exchanges, we have ofttimes been embarrassed on account of the impossibility of getting a sufficient number of skilled laborers and mechanics to prosecute the work.

Q. I will ask you to state whether or not the newness of the telephone business has had any appreciable effect upon your ability to get competent employees to handle the business?

A. That has undoubtedly played its part. Feeling the press of that fact caused the company to open shops at Nashville, where it is engaged, and has been for six or eight years past, in teaching

and training young men in the telephone art, and with a view of sending them out as soon as they reach a certain stage of proficiency, to take up the work at various points where the company is transacting its business.

Q. I will ask you to state whether or not there is any difference in the cost of constructing new lines at present over former years, on account of securing rights of way and donations or co-
316 operation and aid from the communities intended to be served?

A. There is a very decided difference between the conditions as we find them now and as we met them years ago. In the beginning of our work, it was a comparatively easy matter to get the assistance and coöperation of the communities that we were undertaking to serve, and rights of way could be had for the mere asking; ofttimes the people interested, in order to encourage us, would lend us very substantial assistance, in the way of hauling and distributing poles; down on the bayous lending us barges, and such other coöperation and help as would make it possible to prosecute the work economically and without friction. Now it is a more difficult matter to get the rights of way, and we are constantly being harrassed and attacked by claims of damage by the locating of poles or the trimming of trees; such things that are brought up now as causes of action were voluntarily given to us in the beginning; and this, together with the higher prices of material and labor, makes the problem one fraught with many difficulties at the present time.

Q. Mr. Hume, I want to ask you whether or not the question of trimming the trees in incorporated towns in Louisiana has had anything to do with the substitution of cable for open wire construction in exchange plants in that section?

A. It has had a great deal to do with it; the wires on every metallic circuit must be kept clear of all grounds, and
317 anything like the limb of a tree going up through the wires not only disarranges them in times of wind and rain, but causes an interruption to the service.

Q. I will ask you to state whether or not it is practical to give long distance telephone service through cables or any other means except open wire construction?

A. In giving long distance telephone service, it is necessary to give the same over aerial wires, fully protected from anything and everything that would cause the current to change its course, and every effort is made to keep the long distance wires out of even the shortest cables; long distance wires in cables only a few miles in length would make it impossible to transmit the human voice at all.

Q. I will ask you to state whether or not it is a fact that the telephone companies operating in New York City and New Jersey, send their wires on poles up the west bank of the Hudson River to Poughkeepsie and cross overhead on the bridge and then come down the east side into the city of New York, rather than to cable across from Jersey City to New York?

A. That is a fact.

Q. Is it because of this question of cutting down the efficiency of the service in cables?

A. That is the sole purpose of the apparently roundabout route selected.

Q. I will ask you to state whether or not the long distance wires come into the city of New York in underground conduits
318 or overhead on poles?

A. For the greater portion of the distance they come overhead, and in order to give the best results possible, they maintain a switching station at the point where the wires can and do come overhead, and simply make from that point to the local customers connection through the conduits and cables.

Q. Is that true with respect to all the large cities in America?

A. All follow that plan that are unable to bring the wires directly to their central offices overhead.

Q. I will ask you to state whether or not there is any additional expense in the cost of maintaining submarine cables in the State of Louisiana?

A. We have found no way as yet to maintain the submarine cables. We have placed a large number of submarine cables at different times and at different places across the Mississippi River, in Louisiana, but none of them have remained for more than a very few years; some of them have been lost within a few days' time. The last cable that we laid was between Vidalia Louisiana, and Natchez, Mississippi, and through that cable we never transacted any commercial business at all, for the reason that something damaged it down at the bed of the river over night, and an investment of $3400.00 was lost.

Q. I will ask you to state whether or not the expense of purchasing those cables is out of proportion to the aerial cables
319 used for the company?

A. A very wide difference in the cost of the cables, and the submarine cable being very much the more expensive.

Q. What would you say, Mr. Hume, is the average cost of a cable to lay across the Mississippi River?

A. The last cable, and the one that I referred to just now, cost about $1.35 a foot for a 25 pair cable; the same cable aerial would cost between 9 and 11 cents a foot.

Q. I will ask you to state whether or not there is less or more expense in laying these cables compared with the aerial cable?

A. It costs a great deal more per foot to lay a submarine cable, for the reason that it is very heavy, must be loaded on a special truck, and the services of a tow-boat and crew employed to assist our representatives in the work.

Q. Is there any salvage in a submarine cable when it goes out?

A. No, for the reason that as far as the Mississippi River is concerned, there has never been any successful effort to recover a cable lost.

Q. In other words, when it is once put down in the bed of the river, it is there forever?

A. That has been the universal experience of this and other companies in the Mississippi River below Memphis.

Q. Then whenever a submarine cable in the bed of the Mississippi River from Memphis to its mouth becomes defective what happens, and what is the practical result?

320 A. It has to be abandoned and the loss is sustained; there is no way out of it.

Q. And a new one——

A. A new one put in to replace it.

Q. Are those cables made to order, or can they be bought on the market?

A. They have to be made to order; the length and the specifications have to be determined in each case and the cable then manufactured.

Q. Mr. Hume, I will ask you to state whether or not the telephone property of this company is constructed as permanently and as substantially as it is possible to construct them under the present state of the art?

A. The work has been done as good as the best, and far better than any of its competitors.

Q. Are there any conditions encountered in the telephone business in the State of Louisiana entailing expenses upon the company which are not met with in any other part of the territory in which the company operates, if so, state what they are?

A. Well, there are several. First, the condition of the soil. For instance, at New Orleans, in putting down any underground conduits, very much more expensive practices we find necessary than in other places where similar work has been done; this is due to the softness of the ground and the presence of water just below the surface. Then again, the proximity of the wires to the salt water

321 breeze all along the coast and back into the interior 15 or 20 miles, or such a matter, causes the wires to deterioriate rapidly. The expenses of living in Louisiana are greater than in other sections of the country where we do business, and this has to be recognized in the pay-rolls and provided for, and as a consequence, the work on that account costs more; the distance from the base of supply for much of the construction material and equipment used adds another item to the larger cost in Louisiana. There are no native poles that are practical, and a great deal of the soil is so soft and alluvial that the poles have to be set at extra depths, and additional precautions taken in tamping the ground around the poles; and in many cases the poles must be specially guyed with anchors to hold them in place, and in other places, in city work, it has been found necessary to actually make a bed of concrete around the poles to hold the poles on the anchors at all. Louisiana, in respect to roads, is different from any other States where this company does business, to-wit: Kentucky, Illinois, Tennessee, Indiana, and Mississippi. There appear to be no macadamized or public highways in the State of Louisiana to speak of, and the roads, for the most periods of the year are in impassable condition; full loads cannot be hauled, and

as a consequence, the company is handicapped by comparison with other sections and in other States, in the matter of scattering and delivering its construction and maintenance material.

Q. I will ask you to state whether or not there is more or less expense in maintaining the property in Louisiana than in other States; if there is, give your reasons for it?

322

A. The conditions named in the previous two answers cover pretty largely this answer; the expenses that we are put to that are peculiar to Louisiana make the cost of maintaining the property greater than in other States where we transact our business.

Q. The conditions mentioned with respect to Louisiana obtain somewhat in certain portions of Mississippi, do they not?

A. Well, in sections of the Delta, they do.

Q. What about the coast line of Mississippi?

A. The coast line necessarily is affected with reference to the wire question and other equipment that is damaged by the salt atmosphere.

Q. State whether or not you are affected in Louisiana by sleet storms?

A. Strange to say, one or two of our most serious wrecks from sleet storms in recent years were in Louisiana. We have had quite a number of exchanges practically wrecked, and only two years ago a portion of our long distance route running between New Orleans and Morgan City, Lake Charles and the Sabine River, was practically a total wreck on account of a sleet storm.

Q. I will ask you to state whether or not you have had little or much trouble from wind storms and lightning to your properties in Louisiana?

323

A. Well, we have had considerable of both.

Q. I will ask you to state whether or not they have been out of proportion or about the same as in other parts of the territory in which the company operates?

A. I do not consider that we have had any greater damage along these two lines in Louisiana than we have had in other States, but I do believe that we have had quite as much.

Cross-examination:

Q. Mr. Hume, whil- you are operating the night service in Louisiana, doesn't the same expense for exchange service apply?

A. Why no, it does not.

Q. Do not the same operators that operate the exchange operate the toll lines?

A. The number of operators in an exchange is determined entirely by the number of calls handled, local and long distance, and not by the number of telephone boxes, and the number of calls handled causes us to put on an additional operator, or not, just as the peg account, which is taken once a month in all exchanges, shows to be necessary.

Q. Don't you have the same number of operators operating toll lines at night as you have in day time?

A. No sir, we do not.

Q. Do you have more or less?
A. That depends entirely on this question of the number of calls, and it varies.
324 Q. That depends entirely on the business that you handle?
A. That's right.
Q. If you handle a great deal of business, you require more operators, is that correct?
A. That's the idea.
Q. If you handle less business, you require less operators?
A. Yes sir.
Q. Is the toll business at night handled by toll operators, or by the exchange operators?
A. That depends entirely on the size of the exchange and the number of calls that pass through the exchange; if the total number of calls passing through the exchange both from local subscribers and toll lines customers is within the limit of what one operator can handle, why then she would handle both, but if it passes that at all, then a second operator, a third, and so on, is necessary and is placed there to take care of the business.
Q. Now which is the largest exchange in Louisiana?
A. New Orleans.
Q. Do you have the same number of operators at night there, as you have in the day time?
A. We do up to 9 o'clock.
Q. So the day operators operate between 6 o'clock in the evening and 9 o'clock?
A. That is about the hours, but in New Orleans the long distance operators and the local exchange operators are entirely sepa-
325 rate and work in different rooms and on different floors.
Q. But the same operators — handle the day business in New Orleans handle the night business up to 9 o'clock on toll lines?
A. The same number.
Q. You have been asked a question here about creosoted poles; when was the first time that the company started to using creosoted poles in Louisiana?
A. Well, it has been about six years ago, I should say.
Q. These poles are made of what kind of wood?
A. The poles that we have used are pine poles.
Q. From what section of the country do you get those poles?
A. We get them from Louisiana and Mississippi.
Q. Then these poles are dipped in creosote, are they not?
A. Well, they are not dipped in creosote; they go through a creosoting process; the pole is first put into a cylinder and all the sap is extracted by a process, and then it is subjected to a treatment of creosote by another patent process of forcing the creosote into the pores of the pole under great heat and pressure.
Q. What is the life of a creosoted pole, as compared to the life of the non-creosoted pole?
A. Well, pine, untreated, as a telephone pole, is never used except by these so-called "wild-cat" or independent telephone companies, for the life of it is only three to five years, sometimes less; but when com-

pared to what I would term standard poles, that is, sawed cy-
326 press poles from the heart of big cypress timber, and red cedar poles, and locust poles, and other standard poles—white cedar—why our experience has not been sufficient, nor the testimony of others who have been using creosoted timber covers a period long enough to justify any safe conclusion. As a matter of fact, we are using the creosoted poles simply because that is about the only pole that we can get in or close to Louisiana, and because the red cedar pole as such is no longer procurable. We are using the creosoted pole with much doubt and misgivings as to the future, for the reason that its life is absolutely unknown.

Q. Your experience, however, has been for six years with these creosoted poles, has it not?

A. We have had six years experience with them, and while during that time they have stood up very well, we have had cases where they have had to be replaced. It is fair to state, however, that the creosote people gave as an excuse that the pole must not have been a sound one when it was treated; whether they are correct we have no means of knowing we simply know that we have had to replace some of them.

Q. Were they many?

A. Not very many.

Q. What, then, is the condition of the cresoted poles that you have placed in Louisiana during that time, what is their present condition to-day?

A. Well, they appear to be all right; they are not showing
327 decay to enough extent to say that they are decaying, as to whether they will stand the elements a few years longer and retain their tensile strength is one of the very serious questions that is before us, for the pole, in addition to not rotting, must be able to stand there and hold up and withstand the strains that come with the winds and the ordinary weights that are put on it.

Q. Now when a pole is broken down from the wind, or broken from the wind, you replace it, put another pole in place of that one, do you not?

A. Yes sir.

Q. Is the expense of replacing that pole charged to your maintenance account or maintaining the property?

A. Well, it is, if it is a case of just replacing the broken pole; if it is a case of taking a pole route or plant in an exchange, that is what is provided for by Reconstruction charge.

Q. What is the life of cypress poles that you used before you used these creosoted poles?

A. I think that speaking from experience the average cypress poles cut from the heart cypress, will give good results as a telephone pole for 12 or 15 years.

Q. And as to the red cedar pole?

A. The red cedar pole, as for the large sizes, has a considerably longer life than that; we know of some that have been up for 20 years, the red cedar poles used in connection with the ordinary lines,

that is poles of 30 feet and shorter, will stand good for fifteen years on the average.

328 Q. Now what is the life of iron wire, aerially constructed?

A. The life of iron wire aerially constructed depends almost entirely on local conditions. In towns where there are a good many manufacturing plants, and as a consequence a good deal of smoke, the iron wire is eaten up within four to five or six years. Where it is in close proximity to the railroad tracks, where there is a good deal of switching, the lif- is not so long as four years, often being replaced in two and three years. In other sections, where the wire is attacked by the salt in the atmosphere, it deteriorates very rapidly, and on an average is replaced in five years. In country lines, serving plantations and farms, and in small village exchanges where there is quite an absence of manufacturing plants or railroad shops or anything of that kind producing volumes of smoke, the average life of the iron wire would be seven or eight years.

Q. What is the life of copper wire, aerially constructed?

A. Well, the life of copper wire, strung aerially and exposed on the poles, would average 15 years before becoming brittle and losing its strength.

Q. You stated for instance that where a wire was wrecked by a sleet storm, that it required — to put that wire in repair, does it not?

A. The wires that are wrecked in sleet storms are usually in such a tangled and broken condition that nothing can be done with them except to load them up and haul them to a dumping place;

329 I have personally inspected a great many sleet wrecks, and made a special point of going out on the Southern Pacific in the wreck referred to in my direct examination, and we suffered almost a total loss of the wire on that stretch along the Southern Pacific.

Q. Now in case of a wreck of that kind, when you have to replace the wire, do you charge that to maintenance and reconstruction?

A. Yes sir.

Q. You charge that to reconstruction?

A. If it is more than just a break, we charge it to reconstruction.

Q. And if it is merely a break, you charge it to maintenance?

A. If it is just the replacement of a pole that has had some break happen to it, we just charge that in, and that is provided in the maintenance account, but where a plant or a portion of a plant is actually replaced, poles and wires and cables, that is provided under the reconstruction account.

Q. These cables that you refer to, — what parts of the system are they placed?

A. They carry the wires that radiate from the central office, and they go to such distances as the number of subscribers in different directions call for.

Q. These cables are insulated are they not?

A. The wires in the cables are all insulated one from the other.

330 Q. What is the life of these cables?

A. We have no cables in use now that we had twelve years ago; those that were put in prior to that time have all been replaced; they have either let down in what we term insulation, the insulation in there has become defective or else lightning and other outside causes that we could not prevent have damaged them to the extent that made it necessary to replace them; so I would say that from 10 to 12 years would be giving the life of the cable; that that would be a fair statement of the life of the cable, based on our experience of 23 years in using them.

Q. These switch-boards that you have now in use, how long could they be used, giving them the proper maintenance from year to year?

A. We give them their proper maintenance, for they are looked to every day by competent switchboard men, but after doing that, I will state that eight years would be a long life for the average switchboard.

Q. Now by maintaining them and repairing them, could not they last longer than eight years?

A. Maintaining them and repairing them can be very well illustrated by the clothes that one wears; we can take a suit of clothes and give it as good treatment as we will, and perhaps have it cleaned and pressed and patched, and that is maintenance, but the time comes when reconstruction —; the line has got to be drawn between maintenance and reconstruction or replacement; the time
331 comes when all that pressing and patching and brushing does no good, and a new suit is all that will fill the bill. It is that way with telephone switch boards; care for them as we will, and maintain them as best we can, and the time comes, outside of the question of the board becoming obsolete, when the connections get loose and the board is worn out and must be discarded, even though no improvements in the art made it desirable and necessary.

Q. Do you know what the cost of all the switchboards in Louisiana, about what their cost is?

A. No, I couldn't give you that, but we can answer you that question from our books; the records are complete on it.

Q. Now these conduits, in cities, for instance, like New Orleans, you testified that they are very expensive to lay?

A. Yes sir.

Q. What is the life of those conduits, do you know?

A. I couldn't answer that question from personal experience, for our company hasn't any conduits in its system that have been laid for any large number of years. I think that from the testimony of others, and the investigations that I have made, that a properly constructed conduit system would last, on an average, twenty years.

Q. Do you know what the conduit system in New Orleans cost?

A. I do not.

Q. Could you get that figure?

332 A. Yes, I can get the exact figures for you.

Q. These submarine cables that you lay across the Missis-

sippi River, I understand from your testimony that they do not last long at all, by reason of the shifting of the current, or other facts in the Mississippi River which render their life short?

A. Yes sir.

Q. Now when a cable in the Mississippi River is destroyed and another cable is substituted for it, do you charge that up to reconstruction?

A. That is charged to the reconstruction account.

Q. And it appears in your general account that has been testified to by Mr. Smith?

A. Yes sir.

Q. Has the Cumberland Telephone & Telegraph Company any competitor in the long distance business in Louisiana?

A. There are several other companies in Louisiana advertising a long distance telephone business.

Q. Will you name some of them, please; I mean in competition with this company, between the same points?

A. No, I don't think of any competing with us. It has been a very hard matter to induce capital to invest in telephone lines in the State.

Q. Haven't there been some?

A. Well, there were some lines at one time in the neighborhood of New Iberia, and Lafayette, and the country immediately
333 tributary to those centers, owned and operated by a Mr. Hodgsett of New Iberia. And another line for a while was out of Shreveport along Red River.

Q. When these lines of wire and poles are destroyed by lightning or wind storm, and you rebuild them or replace them you charge that also to the reconstruction account, do you not?

A. If it is a question of patching, why it is maintenance, if it is a question of replacement it is reconstruction.

Q. Do you know under what franchise the company is operating in Louisiana, or whether it is operating under any franchise?

A. Yes, I know that we have rights to operate.

Q. Have you a general office in the State?

A. Yes, we have a representative in the State upon whom all processes can be served, a legal representative, Mr. E. L. Powell, with headquarters in New Orleans.

Q. You testified in your direct examination something about subscribers' instruments, is that the instruments that you refer to that are furnished by the American Bell Telephone Company?

A. Unfortunately not; the instrument that I refer to is the telephone set that is placed on the wall or on the desk or table in the subscriber's residence, and that represents our investment with the exception of the receiver and the transmitter.

Q. Then the American Bell Telephone Company only furnishes the receiver and the transmitter?

334 A. That is all.

Q. What is the life of that instrument that you do furnish?

A. It averages about four years.

Q. That is a box isn't it?

A. That is a telephone box, the whole thing.

Q. Don't you repair and maintain it all the time, in case something should happen to it?

A. Oh constantly, we have representatives of the company to make adjustments and repairs on it.

Q. By making repairs on it and maintaining it wouldn't it last longer than four years?

A. Not on the average; it would last longer than that in most cases if it was handled with care; the desk sets are an especially vexing and expensive item to the company, because they are handled with such apparent roughness, they do not average anything like more than half the time of the wall sets.

Q. Mr. Hume, do you know anything about the purchase by this company of the old plant of the People's Telephone Co., in New Orleans?

A. Yes, I know about that transaction.

Q. Did you investigate that plant?

A. I did, very carefully, and on a good many occasions, both while it was building and after it was in operation.

Q. Is that plant now any part of the plant of the Cumberland Telephone & Telegraph Company?

A. Yes it is; the city authorities of New Orleans, by ordi-
335 nance compelled the two telephone companies that were there at the time of the passage of the ordinance, which was just about the time that the People's Telephone Company was taking up its construction work, to build on and occupy alternate streets throughout the city, especially in the congested business district and the built up residence sections of the city; the necessity of taking alternate streets was a very unsatisfactory one to this company, and would be to any other company operating a like service, but the ordinance was observed by both companies, and as a result, when the People's Telephone Company discontinued business, we at different times purchased specific pole routes at points where needed, as the line of poles reached new business, and then it developed, upon request from the New Orleans office for additional underground facilities, that the People's Telephone Company had laid considerable conduits in certain sections of New Orleans, where this company had made no extensions of that line, notably, in what we know as the French quarter—that section beginning at Custom House Street and back of that from Canal Street; then in the wholesale business section and banking section, the growth of our system exhausted the capacity of the ducts that we had laid in that section for the most part, and we found the ducts of the People's company and the cables that they had pulled in well adapted for our use and at the places that we needed them, so we made what I considered a very good trade indeed for the pole routes that we needed and the un-
336 derground plants.

Q. Then what has become of the switchboard of the People's Telephone Company?

A. The People's Telephone Company sold its switchboards to the Southern Electrical Company.

Q. That was not included in the purchase, was it?

A. No sir.

Q. So your purchase represents the conduits that they had laid, the underground conduits?

A. The conduits and the cables that they had in there, certainly. And the poll routes, with the cables, cross arms and wires thereon.

Q. And those cables, poles and wires and conduits are now forming a part of your plant there to-day, is that correct?

A. Yes sir, that is correct.

Further this deponent saith not.

(Signed) LELAND HUME.

Sworn to when given and subscribed before me this 9th day of August 1907.

[SEAL.] (Signed) BUFORD DUKE,
Stenographer and Notary Public.

337 E. L. POWELL, the next witness called, being duly sworn, deposes as follows:

Direct examination.

By Mr. GRANBERY, for the Plaintiff:

Q. Mr. Powell, you live in the city of New Orleans, and have come to Nashville, at my request, to give your deposition in this case?

A. Yes sir.

Q. You are Superintendent of the Cumberland Telephone & Telegraph Company in Louisiana and Southern Mississippi?

A. I am.

Q. You have been how long?

A. I have been Superintendent for about five years.

Q. How long have you been engaged in the telephone business?

A. Fourteen and a half years.

Q. How long have you been in the telephone business as a representative of the Cumberland Telephone & Telegraph Company in Louisiana and the State of Mississippi?

A. Since March 16, 1898.

Q. I will ask you to state whether or not the general operations of the company in that territory are under your direction, supervision and control, and whether they have been since you have been superintendent of that division?

A. Yes sir, they are at the present time, and have been.

338 Q. I will ask you whether or not the last two years you have filed personally the reports of this company to the taxing authorities in the State of Louisiana?

A. Yes sir.

Q. I will ask you to state whether or not the taxing authorities have adopted at any time any basis of valuation of telephone prop-

erties in the State of Louisiana, if so, what was that valuation or basis?

A. In 1898 or '99, when I first began going before the State Board of Appraisers to file the reports, the board adopted as a basis of valuation a unit per mile of poles and per mile of iron wire and per mile of copper wire for the poles and lines used in toll line construction; that was $40 a mile for poles, $5 a mile for iron and $30 a mile for copper wire, when used in the State for toll line purposes; in assessing exchanges they adopted as the rule a charge of so much per subscriber, and they fixed, outside of the city of New Orleans, a value of $25.00 a subscriber; for instance, if an exchange had 200 subscribers, it was valued at $5,000.00, etc.

Q. I will ask you to state whether or not the statements filed by the company for purposes of taxation in the State of Louisiana have since that time followed that basis?

A. It has, practically, except that we reported switchboard and telephones separately, and gave other detailed information that was asked for in the printed form sent out by the State board;
339 they asked for the number of horses and wagons and material on hand and other items, but they do not seem to have paid much attention to that in making up the values.

Q. What is the total assessed value of the company's property for taxes in Louisiana, this year?

A. It is a little over $3,000,000.00; it is right at $3,054,000.00.

Q. What taxes will the company have to pay this year, total in Louisiana?

A. Not knowing the rates, it would be somewhat of an estimate, but I should say that the tax and license, I presume you mean to call that taxes; taxes and license will be in the neighborhood of $50,000.00.

Q. I will ask you to state whether or not in filing these reports for taxation purposes, you have made the explanation with respect to the method of valuing the property in the State.

A. In presenting the reports, I have uniformly stated to the Board that in making up the reports that we had used the figures adopted by the Board at its previous session.

Q. That is, the figures as to valuation?

A. Yes, that we had followed their previous assessment in making up the reports for the Board.

Q. Mr. Powell, I will ask you to state whether or not you have studied this question of depreciation to the company's properties in the State of Louisiana?

A. Yes.

340 Q. I will ask you to state what in your opinion is a reasonable amount to set aside from the earnings each year on the original cost of the property, for depreciation?

A. I don't think less than ten per cent.

Q. I will ask you to state whether or not this includes the ordinary current repairs and maintenance account?

A. No sir, that is a separate and distinct form of depreciation.

Q. I will ask you to state your reasons for the opinion that ten

per cent. is the proper amount?

A. Based upon an actual experience covering nearly fifteen years in constructing and maintaining and reconstructing telephone plants in Louisiana and in Mississippi; I have had under my charge as high as 115 exchanges, that being the number in my district at present, and all the estimates for new work and for reconstruction pass through my hands and have to be approved by me.

Q. Please state, in a general way, some of the expenses incurred with reference to reconstructing plants in Louisiana upon which your opinion to a certain extent is based?

A. In answering that question I would prefer to testify from this memorandum which I have made up from my own knowledge of the case and from the records; I have had the records examined to see, in order to get dates.

Objected to unless the memorandums were made at the time of the reconstruction.

Q. When did you make up that memorandum?

341 A. The memorandum has been made up in the last two weeks.

Defendant objects to the witness referring to the memorandum.

Q. Proceed with the answer, just take each exchange that you have there?

A. Amite City, Louisiana, this exchange was built by this company and opened for service on June 20, 1899, at the present time the plans have been made and approved for the work to largely reconstruct the exchange, and this work will be taken up as soon as the material, which has already been purchased can be placed on the ground. This reconstruction will exceed sixty per cent. of the original cost of the Amite City Exchange.

342 Arcadia, La.—This exchange was built and placed in service on May 22nd, 1901, and during the years 1906 and 1907 was completely rebuilt as far as the outside plant is concerned, that is, everything except the switchboard and telephones.

Bastrop, La.—This exchange was purchased by this company on September 1st, 1905, having been built in 1900. Plans have been approved and materials purchased for entirely rebuilding the plant, including the new switchboard and new instruments. The salvage on the reconstruction of the Bastrop plant will not exceed ten per cent. of the original cost.

Baton Rouge, La.—This exchange was originally built by the Great Southern Telephone and Telegraph Co. Was purchased by this company in 1898 and rebuilt immediately thereafter, using, however, the old telephones in use, not exceeding forty in number, new switch-boards, new wires and new cables were necessary at that time. Notwithstanding that fact, the exchange, as far as the outside wiring is concerned, has been entirely rebuilt during the years 1906 and 1907 and at the present time, a force is engaged in the work of installing new switch-board and new wiring complete, and instruments have been ordered to equip with new equipment, every telephone of that exchange.

We purchased the exchange at Alexandria, La., on Jan-
343 ary 1, 1901, and this exchange was entirely rebuilt in less than one year thereafter, including the installation of new telephones and new switchboard, and at the present time, plans are in the hands of the engineering department, calling for a considerable outlay of money in further reconstruction work.

Amite City, La.—This exchange was built by this company and opened for service June 20th, 1899, and, although the exchange has received the usual care and maintenance, plans have been made and approved for the work of largely reconstructing the exchange, and this work will be taken up as soon as the material can be placed on the ground.

Arcadia, La.—This exchange was built and placed in service May 22nd, 1901, and during the years 1906 and 1907 was completely rebuilt, as far as the outside plant is concerned, that is, everything except the switchboard and telephones.

The exchange at Boyce, La., was purchased by this Company on January 1st, 1906, and will have to be entirely rebuilt within the coming twelve months.

Bunkie, La.—This exchange was built, I don't remember the exact date and opened for service, and during the year 1906, the outside plant was entirely reconstructed and the old lines replaced entirely with new material.

Colfax, La.—This exchange was purchased by the com-
344 pany on January 1st, 1906, and will be entirely rebuilt within the coming year.

Coushatta, La.—This exchange was built by this company and opened for service Nov. 1, 190–, and completely rebuilt, as far as the outside plant is concerned, within the past eighteen months.

Franklin, La.—This exchange was purchased by this company in 1898, was entirely rebuilt within 18 months from date of purchase, and at the present time, plans are in the engineering department receiving consideration, providing for the practical rebuilding of the outside property, that is, the p-le lines and cables.

Gueydan, La.—This exchange was built in 1897, and will have to be entirely rebuilt within the next two years.

Hammond, La.—This exchange was built by this company and opened for service on December 6th, 1898, and during the early part of 1907, has been almost entirely reconstructed, with the exception of switchboard and instruments.

Homer, La.—This exchange was built and opened for service on Oct. 20, 1900, and in the past twelve months, we have found it necessary to entirely replace poles, wires and cables, with absolutely new equipment.

Houma, La.—This exchange was purchased by this company on April 1st, 1899, rebuilt entirely within twelve months there-
345 after, including the installation of new telephones and new switchboard, and office equipment. Not one vestiage of the old plant remained at the end of one year, and at the present time, plans have already been approved by the engineering department calling for the expenditure of a very considerable sum of money in reconstruction work at Houma, La.

Jennings, La.—This exchange was purchased on July 1st, 1901, rebuilt entirely within the first twelve months thereafter, including the installation of new switchboard and new instruments, and within the past twelve months we have found it necessary to expend a large sum of money in reconstructing the lines. This reconstruction expense being largely due to damage caused by heavy sleet storm, that passed over that section, tearing down poles and wires, and generally demoralizing the system.

This exchange at Kentwood, La., was built by this company and opened for service March 26th, 1901, and it will be necessary for the entire outside plant to be rebuilt during the present year.

Lafayette, La.—This exchange was built by this company and opened for service on August 10th, 1899. It was entirely rebuilt during the years 1906 and 1907, with the exception of switchboard and instruments.

Lake Providence, La.—This exchange was built by this company and opened for service on May 7th, 1901, and at the present
346 time plans have been made for the entire reconstruction of the outside plant. Not a single pole now in use will remain in service after the reconstruction, and this work will be done as soon as the material can be placed on the ground, and we hope to have it completed during the present year.

Lutcher, La.—This exchange was built by this company and opened for service on April 16th, 1900 and at the present time plans are being made to replace all of the wires with new lines. The poles, however, will remain in service to the extent of about seventy per cent.

Mandeville, La.—This exchange was built by this Company and opened for service on January 18th, 1901, and during the year 1908 it will be necessary for us to replace all of the present poles with new poles and to replace the wire with cables.

Marksville, La.—This exchange was built in 1900 and during 1908 it will be necessary for us to entirely rebuild the plant as far as outside construction is concerned.

Minden, La.—This exchange was built and opened for service on July 15th, 1899, and during the past year it has been largely rebuilt. This consisted of renewal of poles and wires.

Monroe, La.—This exchange was purchased by this company in 1898, and entirely rebuilt within two years thereafter, includ-
347 ing the installation of new switchboard and new instruments.

Napoleonville, La.—This exchange was built by this company and opened for service January 1st, 1900 and plans have been made for the reconstruction of the exchange, as far as the outside plant is concerned, to an extent of about seventy per cent. The work will be done during the year 1908.

Natchitoches, La.—This exchange was built by this company and opened for service February 20th, 1901, and was entirely reconstructed, as far as the outside plant is concerned, during the year 1906, all wire, poles and cross arms being at that time replaced with new material.

New Iberia, La.—This exchange was purchased by this company on November 12th, 1898 and during the years 1905 and 1907 was entirely rebuilt with the exception of subscribers' instruments.

Plaquemine, La.—This exchange was built by this company and opened for service on December 15th, 1898, and during the year 1906, was rebuilt to the extent of eighty per cent. of the original construction, with the exception of switchboard and subscribers' instruments.

Ruston, La.—This exchange was built by this company and opened for service on March 10th, 1900 and during 1906 and 1907, as far as the outside construction is concerned, was entirely rebuilt.

348 Rayville, La.—This exchange was purchased by this company June 1st, 1904, having been built about four years prior thereto and during 1906 was entirely reconstructed, incouding the installation of new switchboard and interior apparatus.

Shreveport, La.—This exchange was purchased by this company in 1898, was rebuilt to the extent of fifty per cent., within two years thereafter and other rebuilding work has been done since that time, so that now the plant has been entirely reconstructed, with the exception of switchboard and subscribers' instruments, to the extent of eighty five per cent.

Thibodeaux, La.—This exchange was built by this company and opened for service on February 11th, 1899, and during the past three years has been rebuilt to the extent of eighty per cent.

Vinton, La.—This exchange was built in 1899 or 1900 and will, during the next twelve months, be entirely rebuilt as far as outside construction is concerned.

Q. The memoranda from which you have testified, was all made by you in person, was it?

A. It was.

Q. I will ask you to state whether or not the dates of the construction of the different exchanges is the only thing that you had to consult any books or records about?

A. That is all. The dates were taken from the records, to be sure to get the exact dates.

349 Q. I will ask you whether or not your independent recollection accords with the dates set out in that memoranda?

A. It does.

Q. I wish you would state your experience with submarine cables across the Mississippi River in your territory?

A. Experience has shown that the average life of the cables has been about three and a half years, and that the maintenance of submarine cables across the Mississippi River has been very uncertain and very hazardous.

Q. Is there any salvage when they give out?

A. No sir.

Q. Can you pull them out of the river, or do you have to abandon them?

A. We abandon them. We pulled two out of the river and in

each instance the cable was worthless for use as a cable and was sold as junk, and did not realize half what it cost us to get it up.

Q. Wherever you have these submarine cables, state the places in the State of Louisiana under the Mississippi River?

A. We have cables crossing in New Orleans from the foot of St. Louis Street to Algiers Point at or near the foot of Patterson Street; also, in New Orleans, across from the foot of Richards Street
350 to Free Town; we have a cable crossing at Convent, La. I think it is over to St. James. At any rate, the crossing is at Convent. A cable crossing at Baton Rouge. Now, these are the only crossings that are altogether in the State of Louisiana. We have other crossings of the Mississippi, further down the river.

Q. Have you submarine crossings at other points in Louisiana, not passing under the bed of the Mississippi River?

A. Yes sir.

Cross-examination.

By Mr. McCaleb, for Defendant:

Q. Do you know what the cost of the conduits laid in the City of New Orleans were, those laid by the Cumberland Telephone and Telegraph Company, approximately?

A. No sir, I do not.

Q. Or of the Peoples Telephone Company there?

A. No sir, I don't know those figures.

Q. Mr. Powell, notwithstanding the rebuilding of these exchanges there appears to be a surplus from the earnings in Louisiana, is not that a fact?

A. How do you mean.

Q. The net earnings?

A. Yes, the books of the company show we are making about five per cent. on the investment.

Q. In the State of Louisiana?

A. Yes sir, in the State of Louisiana, the books show we
351 are making about five per cent. in the State of Louisiana.

Q. Do you know if all the amounts set aside for depreciation for each year, has been used in that year?

A. I do not know. That is a matter of general bookkeeping that I am not familiar with.

Q. Has not the company been given privileges and franchises in Louisiana in various towns and cities?

—. Have they been given that in the cities?

Q. Yes.

A. I don't know of a single place in Louisiana where it has been sold to anybody.

Q. Hasn't it all been given to you?

A. We have had them, not only in Louisiana, but all around. It is nothing more than a privilege or right to do business.

Q. Have not you had franchises to lay your lines through practically every town or city?

A. We have the permit from the town.

Q. Free of charge?

A. Yes, that is customary. It is a permit to do business only.

Q. All these privileges have been given to you free?

A. Yes, absolutely. We do not pay for them anywhere. We have had one or two passed where there was a pay privilege attached and we did not avail ourselves of it at all, were not willing to do that.

352 Q. Could you tell us what difference in revenue it would make to the company if the night rates, under Order No. 552 were made the same as the day rates under order No. 552?

A. I believe the net result would be a reduction in the revenue of the company. If I understand your question right, it is, what would be the result, if the day rates were reduced in accordance with that order and the night rates brought up to that.

Q. Yes, that is it?

A. I believe the net result would be a reduction in the revenue of the company.

Q. Would it be a material reduction?

A. It would be as much a reduction as if the night rates were left the same, but I do not think the increase provided by bringing the night rates up to the day rates there would be enough to balance the decrease in the day rates. That is what I mean, that taking the two together, there would still be a reduction in the revenue of the company.

Q. But, not as great a reduction as contemplated under the order of both day and night rates?

A. Of course not, but it would be a considerable reduction in the revenue over the present revenue.

Q. You do not know what that reduction is, do you?

A. It has never been figured out.

Further this deponent saith not.

(Signed) E. L. POWELL.

353 Sworn to when given, and subscribed to before me on this the 9th day of August, 1907.

[SEAL.] (Sig.) BUFORD DUKE,
Notary Public and Stenographer.

354 JAMES E. CALDWELL, the next witness called, being duly sworn, deposes as follows:—

Direct examination.

By Mr. GRANBERY, for the Plaintiff:

Q. Mr. Caldwell, you gave a deposition in the same styled cause, No. 61, some time this spring, did you not?

A. I did.

Q. You still stand by the statements made in that deposition?

A. I do.

Q. Please state the reasons why the company has found it desirable to abolish the half rate at night and use a uniform rate for the same service during the hours of the day and night?

A. There are two reasons that actuated it in doing so: one is the manner in which the night business was being handled by the public or treated by the public, many of the business people postponing their calls until the evening hours, has caused a congestion to set up at that time of the evening, which affects the service, creates irritation and aggravation; and in addition to that, the company's financial situation compels it to have more revenues from some source, and this, among others, seemed to be the place where it should most equitably be derived. This whole night-rate question was an
355 experiment, to begin with, very much as the four, very much as the four, six and ten party line exchange business was. Telegraph companies had had what they called a night rate—presumably one-half of its regular tariff. Without analyzing their manner of handling that business, and without giving it any very critical thought, we fell into patterning along that line. It was an experiment, but as a result of several years' experience now the great difference between the business of telephony and telegraphy and the manner of handling messages by the respective concerns, has demonstrated that there is no just or fair comparison that can be made, and that as an actual fact, this night rate business of the telephone company is handled at a greater expense than the day business, and as I say the comparison between the manner in which the telegraph companies handle it and the telephone companies handle oral messages is altogether dissimilar, and there can be no comparison made between the two; so that from every standpoint, it seemed to us that it was a business that we should discontinue.

Q. Please explain the difference in handling telegraph and telephone toll business?

A. With reference especially to night business, the telegraph company takes the so-called night-rate at any time during the day up to say 12 o'clock at night, but it does not undertake to deliver those messages until the next morning. If messages are expected and intended to be delivered at once by the telegraph company,
356 their regular day rate is charged therefor; indeed, after certain hours in the night they charge the full day rate for everything that they handle, if they handle it at all; whereas, in handling telephone messages, the customer sends his own message; his convenience has to be considered and consulted; he intends to send it at once and get his reply at once, therefore the telephone message must be sent instanter, the operators and the whole paraphernalia be kept intact and on duty to handle the same, messengers to go for parties and bring them to the telephone—in other words, the whole operating outfit must be maintained in its active condition as it is at any time during the day, and which of course is done at a greater expense at night than during the day.

Q. Do telegraph companies send any messages, day or night, at less than 25 cents?

A. I do not know that fact, Mr. Granbery; I am advised, that in the State of Louisiana no telegram is sent at less than 25 cents, day or night.

Q. I will ask you to explain the difference, if there is one, between

the telegraph companies sending messages and the telephone company, trying to get calls through and failing to do so; is there any charge by the telephone companies for a lost call, or where a man puts in a call and the operator uses the line in trying to locate the party at the other end, or distant point, and failing to do so?

A. In such cases as that we make no charge for it at all.

357 Q. I will ask you to state whether or not this entails a small or a large amount of the time of the operator?

A. It takes just as much time on the part of the operators in attending to that as it would to put the message through, as the operators do not send the messages themselves, but simply connect the lines and the parties together, they perform in a case of that sort all the service that they would or could perform even if the message were successfully sent through.

Q. Do the telegraph companies maintain their offices open at night for the public generally?

A. Only in their larger offices, their smaller offices are not.

Q. How about the telephone companies, your company doing business in Louisiana?

A. I know of no exchanges in Louisiana that are not run night and day and Sundays; in other words, they are kept open continuously; if there is any exception to it, it is some very small and unimportant place that does not occur to me now.

Q. Has the plaintiff company abolished the half rate at night at any part of its system, if so when and where?

A. It has, everywhere in its territory, except in Louisiana on the 1st day of August, 1907.

Q. What has been the result?

A. Up to the present time it seems to have been a complete success from both points of view; we have had no complaints of the action; there has been no newspaper criticism of it that has

358 come to my knowledge at all; there has certainly been no action taken on the part of commercial organizations, but on the contrary many congratulations have been received that we have stopped what they term the nuisance of the congested night service; and there does not seem to be any falling off in the number of messages actually passing over the 24 hours.

Q. Is there a falling off in the number of lost ones?

A. I don't know how that would be; I haven't had any occasion to investigate it.

Q. I wish you would state fully the value of the telephone service, both the exchange and long distance, at the prices charged the patrons of the company, as compared with other means of communication and prices charged and other means of transportation, and as a tool in the affairs of the business public?

A. The average cost per message to the public in the various exchanges is about one-half of the rates charged by the government for handling letters; it is of course vastly and infinitely faster; the slowest telephone service is faster than any other means of communication, and the average telephone service outstrips every other means of communication or transportation. The telephone is the latest

utility seeking public patronage for means of communication. Its problem was to train the public into the habit of using its appliances; it has strained itself in the effort to do that in every way pos-
359 sible, to attract business and stimulate business; it has done so to the extent that it has been recognized as so entirely reliable, speedy and efficient that it has come to be referred to as a necessity; in other words, by its efforts and enterprise and cheapness, it has engrafted itself on the commercial business, as they term it a necessity, thus emphasizing how completely more important and superior it is recognized than any other means of communication. As I say, this very fact that it is referred to as a necessity is the very best evidence of its superiority and efficiency.

Q. What has brought about the situation which now regards the telephone as a necessity in the State of Louisiana?

A. Very much as I stated in answer to the previous question: the effort and the enterprise and the thoroughness with which the business has already been developed and conducted and operated, and the price at which it has been offered to the public.

Q. Does the telephone company have to compete with all other means of communication for public business, both as to promptness, efficiency and price?

A. It certainly does, for prior to about 25 years ago there was no such means of communication at all, and yet the great business of the world was carried on, and all the facilities that were in existence then are still in existence and the telephone is just one more facility added to the number then in existence, and it does have to compete and fight its way for public favor and patronage.

360 Q. Why is a telephone a necessity to a man engaged in business in the State of Louisiana?

A. Simply and solely for the reason that it is more efficient, more economical than anything else which he can employ to do a like service; it so completely outstrips every other means, both as to speed and economy.

Q. Does this have any effect upon his profits in his business?

A. It undoubtedly does; it undoubtedly is the most valuable tool both in the way of stimulating the amount of business which he does and the economy with which it is transacted. It is a common occurrence for complaints to be made, or statements to be made, rather, that parties are loseing from one to five hundred dollars a day if their telephone service is crippled or impaired, thus emphasizing the value and importance that is placed upon it.

Q. And yet is it not a fact that this company does not charge any one patron in the State of Louisiana as much as fifty cents a day for telephone service?

A. There is none that I know of, certainly none within the exchange radius.

Q. Was the telephone regarded as a necessity in the State of Louisiana in 1898, when the plaintiff company began business in that State?

A. It was not, and could not have been so regarded; indeed, the

development of it was so insignificant and small that it at-
361 tracted but very little attention and was certainly not relied upon or depended upon by the commerce of the community as a facility in business.

Q. Has any other telephone company developed the business in Louisiana to any extent in the last nine years?

A. Nothing of any scope or importance.

Q. Then in a period of nine years, the plaintiff company has so developed its business that it has made the use of the telephone a necessity in the State of Louisiana?

A. That is practically so; at any rate, they claim that that is the condition.

Q. Do you think that any set of gentlemen who have risked their capital in the development of this business and have brought it from nothing practically to a necessity in nine years, should be content with a simple rate of interest upon the capital invested and not have anything for their enterprise and their risk and their foresight and business judgment in developing the business?

A. It does not seem to me to be at all fair or reasonable that they should be expected to do so, but on the contrary over and above an ordinary interest return on the capital, there should be the compensation for the enterprise and activity and hazard that are assumed; in other words, there should be some commercial compensation, in addition to a fair interest on the money actually interested.

Q. Mr. Caldwell, I will ask you to state whether or not the
362 properties of the plaintiff company in Louisiana have been purchased and built from time to time up to the present as economically and with as good business judgment as the state of the art justifies.

A. It has been done to the very best of our ability.

Q. Please state whether or not the present property of the company in the State of Louisiana could be duplicated to-day at its actual cost to this company and what it stands on its books at?

A. No sir, it could not.

Q. Then what per cent. would you say it would be required to add additional capital, to duplicate it?

A. Anywhere from 25 to 33 per cent.

Q. Will you give your reasons for this?

A. Material of all kinds is considerably higher; labor is higher; the very first conditions of construction are different; matters of rights of way: in the early stages of construction the friendly interest that was manifested by the public to have the service extended and developed, caused them to aid in every way, to make the conditions as simple and as economical as possible, lending, if not financial, at any rate, such assistance as rendered it unnecessary for us to spend money; all of such aid, as I say, was rendered in the first construction, but after the business had been developed, and the novelty was worn off, and it was regarded as a thing come to stay, so to speak, why everything is charged for, and all the conditions

363 are made expensive and have to be paid for. The railroads themselves, if they were not indifferent, I mean if they did not actually aid us, were at any rate indifferent to our building in the beginning, but as the development progressed, the telegraph companies who have contracts with all these railroads, saw that it was a competitor, and perhaps a dangerous competitor of theirs, caused them to bring the matter sharply and emphatically to the attention of the railroad authorities under their contracts, thereby causing them to make it troublesome, at any rate withdrawing any favors which they were inclined to extend us; so that the construction now has to be made in the face of very strong opposition and hostility.

Q. Have the railroads, of recent years, entailed any expense upon the company in the way of litigation and other ways, and getting rights of way, and in the construction of telephone lines, in the State of Louisiana?

A. They have. They have contested our use of rights of way in the most bitter and persistent manner, in the courts and out of them.

Q. I will ask you whether or not it is necessary to use the railroad rights of way in Louisiana to construct these toll lines, if so, give us your reasons for it?

A. There is no other practical way. Prior to the railroad in Louisiana the transportation was along the water courses, the best means are along the water courses, the growth and development of the country is that way; these water courses of course are very crooked and tortuous, the highways, such as they were, fol-

364 lowing the meanderings of the streams, the houses fronted on them, the shade trees overhanging them; these highways, such as they are, are at times almost impassable, if not entirely so, for the people who live on them, in the winter time used the rivers, the water courses as means of transportation, and did not rely upon them except for very short journeys, so that there are no highways of a practical nature in Louisiana along which telephone lines could be constructed; therefore the railroad rights of way form the only practical means of doing so. I know, indeed, of no telegraph line in the State of Louisiana having ever been built or having been built other than on the railroad rights of way. We tried in the beginning to use the highways, but found it utterly impossible. So that the railroad rights of way are the only practical solution.

Q. Does this entail any additional expense upon the company by reason of having to transport the material and men by the railroads?

A. It certainly does, and in addition, we have to pay the railroads a good round price for the use of their way land, and then pay them for all of the service which they render us in building and maintaining.

Q. Compared with northern Mississippi and the remainder of the company's territory north of there say a line extending from

Meridian to Vicksburg through Mississippi, are those conditions met with to any extent?

A. No sir, the roads in that country, north of what you describe, except in the Yazoo Delta, are in the main direct and well
365 kept up roads, that are in a passable condition the year round, and the States have allowed the use of them free of charge; they have become entirely practical, and we use them to a very large extent.

Q. The plaintiff company operates in no incorporated town or city in the State of Louisiana, without permission or so-called franchise from the various municipal authorities, does it?

A. None that I know of.

Q. Do those franchises, in that State or elsewhere, stand upon the books of the company or figure in its capital in any way?

A. No, there has been no value placed on them, they do not stand on the books as an asset at all.

Q. Is it true that the valuation on your books on which you pay dividend is confined exclusively to the actual dollars put into the business by the stockholders?

A. It is entirely so, there is no artificial capitalization or construction account whatsoever in its make up.

Q. I will ask you what the telephone plant or the entire properties of the plaintiff company in Louisiana are worth if the company should cease to do business in that State, what would be the value?

A. I should think not over 25 cents on the dollar; most of it would not pay to take it down.

Q. So that the telephone properties must be operated continuously in order to maintain its value or any appreciable part
366 of its value?

A. It must; as an illustration of that, the telegraph line from New Orleans to Port Eads, a distance of 100 miles, was recently abandoned, and instead of taking it down it was sold to a junk dealer for $75.00; that represented its value as a liquidating concern.

Q. Why was that telegraph line abandoned?

A. For the reason that it did not pay to maintain it and keep it up.

Q. Has the plaintiff company a line from New Orleans to Port Eads?

A. It has.

Q. Is that regarded as an extra hazardous and expensive line to maintain?

A. It is considered a hazardous line to maintain.

Q. Is that fact recognized by the railroad commission of the State of Louisiana?

A. I think it is.

Q. Do they allow a higher rate on that line that usually obtains in the State of Louisiana, on toll line business?

A. Yes, they do.

Q. Was this rate authorized before the company undertook the building of the line?

A. I think not; I don't think the Commission authorized that before the line was built.

367 Q. Mr. Caldwell, please state whether or not every possible expense is eliminated and every possible economic practiced in the building, maintaining and operating the plants and properties in the State of Louisiana?

A. It is.

Q. State whether or not this condition has existed from the beginning of its operations to the present time?

A. It has, and you may rest assured that the very best talent has been directed in that line, when you know that the men directing it are spending a part of their own money at it. They have every incentive and have practiced, to the very best of their ability, to get the best results and the cheapest results out of it.

Q. Do legal rates of interest in the various states yield a sufficient return upon the capital invested to justify or enable telephone managers to construct properties and operate them?

A. If we could only return the so-called legal rates of interest on the capital, we would have been utterly unable to develop it to the point we have and we simply could not carry it any further.

Q. Why is this so?

A. For the reason that it is hazardous business, it is comparatively a new business, full of trials and troubles that beset it, or hazardous and uncertain as you might say, that is the controlling reason and the lack of profitable returns that have been made on it up

368 to the present time, for the telephone business up to the present time has not proven a practical and profitable form of investment throughout the country.

Q. Please state whether or not this company could secure additional capital with which to extend and continue the development and growth of its business in the State of Louisiana by paying less dividends to its stockholders than seven per cent.?

A. It can not possibly do so.

Q. State whether or not there are any conditions at present which renders it uncertain whether a seven per cent. dividend will induce new capital to come into the business?

A. The conditions now surrounding the business make it a certainty that capital will not come in at the present rate of dividend. The company's stock is now selling in the open market at one hundred and three and a half. There is no market for bonds. It has been borrowing money in the open markets until its floating indebtedness is now close to three millions of dollars, which is a dangerous and unsafe position to be in. In other words, just as it stands, the company is financially stuck hard and fast. It has no way of raising money except out of its business, and if it is to be prevented or curbed down to its present condition and situation, it will stagnate as completely as can be, for even seven per cent.

369 is not now considered and not now recognized as an inviting or tempting rate for money.

Q. What is the current rate for the use of money in New Orleans at the present time?

A. Seven per cent. and over.

Q. Are the risks upon those loans equal to the risks taken by a stockholder in telephone properties?

A. They are not, by any means.

Q. You speak of the telephone business being unstable and a precarious business. Please explain why this is so?

A. The unknown question of decay and evolution in it is one that has not been fathomed, the busines is not old enough, there are not people living who could have had enough experience to possibly forecast what is to come. They have seen enough to know that it is full of doubt and uncertainty. Not only the wear and tear of the property now in existence, but what evolution will be required and what changes, for there have been many, and what these changes are to be, admonishes prudent people of the possibilities and dangers that are yet ahead, and in their anxiety to develop and put the telephone facilities into the public's hands. In other words, to introduce it as a commercial factory, and the anxiety upon the part of men to do a large business, has carried the whole scheme down to a danger line, if indeed it has not passed the danger line. The rates are too low, there is not enough profit in the business. The public is slow and unwilling to recognize this, but after all, their clamor and de-
370 sire for service is paramount and we are given to understand on every side, that that is a matter of first consideration, that it is the service and the quality of the service and not the price. But, nevertheless, the prices are low and they are too low. Hence, people who have money to invest have got this to look squarely in the face. That is to say, a comparatively new business, whose tenure and life is unknown what will be the evolution required of it, all of these things operate to deter and make people cautious and disinclined to invest freely in it. As I said to a gentleman on a recent visit in New Orleans, knowing that he was an investor of large funds, why he didn't put money in the telephone business and he answered promptly, I do not consider that you are getting sufficient rates to make your business stable and permanent.

Q. Mr. Caldwell, has any appreciable effect been made upon the public mind with respect to the prices of telephone service, by parties desiring to organize companies with a view of floating large issues of securities and with no expectation and intention of investing money in the business with a view of conducting the business, as a business enterprise?

A. There has been a great deal of that and it has had a very decided effect upon the public mind.

Q. What is this scheme to which you refer?

A. It is the matter of building so called independent telephone plants by promoters throughout the country. Their plan, as
371 far as it has come under my observation, has been to build properties, offer any rate that would make them popular with the public and place on them from two to four times their value in securities, and sell these securities to the public and of course those

people who buy the securities then become the owners of the property and have to meet the necessity of running it, and without any exception, they promptly make an effort to get better rates and overcome the mistake of trying to conduct the business at the price that the promoters held out and stated were sufficient.

Q. Has the telephone business in America been profitable or unprofitable, since the first invention?

A. Taking the business as a whole, it has been full of disaster and little or no profit. There have been some companies here and there that have weathered along and made some return on the money invested in them, but the greater part of the territory in the United States, or that is to say, the companies operating in the larger part of the territories in the United States, has been unprofitable and a failure. Indeed, failures have been numerous and some of them very large.

Q. I will ask you to state whether or not there is anyone else in America that you know of, who has been in the telephone business longer than yourself?

A. I know of no manager, general manager, that has been in the telephone business in America any longer than I have.

372 Q. Are you acquainted, in a general way with the principal telephone companies of the country?

A. I am.

Q. Please enumerate them and give their financial record in a very general way?

A. The New England Company, which operates in the States of New England, has never paid above six per cent. and it is still paying that rate. The New York Telephone Co. has paid six per cent.; New York and New Jersey, is paying seven per cent.; the Hudson River and Central New York States is paying nothing. The Bell Company of Philadelphia is paying six per cent. which is a decline in the rate formerly paid. The Keystone of Philadelphia has been re-organized certainly once, and I think oftener, and I think it pays no dividends at all. The Chesapeake and Potomac, operating in Maryland and the District of Columbia, etc., has reduced its dividends, and I think are not now paying anything. The Central Union, operating in Ohio, Indiana and Illinois, has paid no dividends for ten years and its securities have no standing whatever in the markets of the country. The United States Telephone Co., with headquarters at Rochester, with extensive operations throughout that section of the country, with securities aggregating somewhere in the neighborhood of eighty millions of dollars is a complete bankrupt, its bonds being quoted around twenty five cents on the dol-

373 lar. The Kansas and Missouri is paying no dividend. The Southern Bell, operating in the Southern States east of the Mississippi, for years paid no dividend and in the last year or two, have been paying six per cent. The Southwestern Company in Texas and Arkansas and throughout that country, is paying four and five per cent, but at times, paid nothing. The Pacific States Company was considered a prosperous company, but the earthquake of San Francisco necessitated a complete re-organization of its

finances and what its present condition is I am not advised, as it is in the midst of its financial re-organization and the outcome is unknown. This about covers the country, of the older companies, and some of the newer ones. There is a concern at Memphis, known as the Home Telephone Co. whose securities have no value whatever in the market, but have been offered to this company repeatedly at very great sacrifices. The Home Telephone Company of Louisville, the bonds are quoted at seventy to seventy five cents on the dollar and their stock from twenty to forty cents on the dollar and it has recently stopped paying dividends and is asking the city authorities for a right to advance the rates. So that, whether it is the so called Bell companies or the opposition companies, there are none of them showing any fine profits, but most of them are in a dragging condition, and some of them in actual distress. This, really, represents the telephone situation in the country.

374 Q. Those companies you have mentioned, operate both toll line and exchanges. Is there any company in the country doing only a toll line business?

A. There is one company doing a toll line business alone, known as the American Telephone and Telegraph Co.

Q. What is its situation?

A. Its business is considered profitable as they say it grows mainly out of their operations around the larger cities of Chicago, Boston, New York, Philadelphia and Baltimore, where their suburban toll business is very fine and their rates on such business is considerably higher than any of the rates of the Cumberland Telephone and Telegraph Company for like service.

Q. That brings me to a question I should have asked sooner. In what way has the competition between the telegraph companies and the plaintiff company, affected the business of each?

A. The telegraph companies still labor to handle the long business, handling the business; after you pass a distance of one hundred or two hundred miles, possibly they are able to handle the business much more economically than can be done by the telephone company. On the other hand, business under a hundred miles, the telephone companies can handle it so much more satisfactorily, with so much greater efficiency and economy in ever- way, that they have practically eliminated the telegraph companies from that character of business. In other words, we do not feel telegraph com-

375 pe*n*tion on business under a hundred miles, and on the contrary, we are hardly able to compete with them beyond that, except on a very high class and important character of business.

Q. Have you been able or have you made any effort to interest capital in the Southern States in this company?

A. I have made it a business for seventeen years, going on eighteen years.

Q. Have you been able to do so?

A. I have been able to interest but very little money in the south. Outside of Nashville and Middle Tennessee, very little. All south of here, the invariable reply has been, money can be employed so much more profitably in other lines of business that ours affords no

attraction whatever, and therefore there is a very small amount of money invested in it, south of Nashville.

Q. Have efforts been made to interest and induce capital to come into the business in Louisiana and New Orleans?

A. A very great effort was made in Louisiana and especially in New Orleans, with very limited success, for the reasons I have stated, that the parties stated the money can be employed very much more profitably than we could show it could be done in our business and in some instances the statement was made right ought, that they did not believe we were getting rates sufficient to make our business permanent and profitable.

376 Q. Mr. Caldwell, state whether or not there is any appreciable demand for better service, both local and long-distance, in the State of Louisiana, at the present time?

A. There is a pressing and persistent demand in that direction. From our experience, that is the invariable rule. We seldom hear any complaint about rates, there is seldom any objection made to the rates, but there is a constant and pressind demand for better and more extensive service.

Q. I will ask you to state whether or not your experience with the business public and the users of the telephone service in the State of Louisiana has developed any appreciable complaint as to prices charged by the company now, or in the past?

A. As I say, we have not had and we do not have, special complaints about prices. We have, at some intervals, had the question up, but that has not been the case for a good many years, but on the contrary, since the development has been anything like as comprehensive and large as it is now, the question of price has seldom been raised, but the question of service is constantly raised, not only the character of the service, but the extensiveness of it.

Q. At the beginning of your operations in Louisiana, was there, or not, much complaint or talk of rates for service?

A. There was a good deal of complaint of rates, for the reason that the rates were based upon what would be necessary for a

377 normal development, but the development had not taken place, and therefore considering the quantity and the quality of service being rendered, the price was considered high.

Q. Now, that was a time when it was not regarded as a necessity and the development was very small?

A. Yes sir.

Q. Now that it is regarded as a necessity, as you have stated and the development is large, I understand you to say that the complaint now is for better service and not lower prices?

A. For better and more extensive service and not for lower prices, except in rare instances.

Q. Taking your exchanges in Louisiana alone, as distinguished from your toll line business, state whether or not your customers receive more or less now for the money they pay than they did four or five years ago?

A. They undoubtedly receive anywhere from two to five times as much for the money they are paying now, as they did then. And, indeed, taking as a whole, they are not paying the same rates they

paid then, for there has been a reduction in some cases, different classes of service in others, operating to make the rates lower than they were then, and the increase in service vastly more, so that the sum total is, that the rates they are paying now, they are getting from two to five times as much for their money as they did seven or eight years ago.

378 Q. You spoke of the four, six and ten party line rates in Louisiana which had been abolished. Do you recall the circumstances leading to the withdrawal of that service and the conditions under which it was withdrawn. If so, state it fully?

A. Those rates were put out as an experiment. It was thought by a great many of the best telephone people that that would be the solution and the way in which the service could be cheapened to the public, so that they were put out on a trial, with the hope that that would be so. They were taken very freely, in considerable numbers, but it was quickly demonstrated that it was a ruination of the service, that it was impossible to give satisfaction to anybody, with any large percentage of the exchange equipped in that manner, therefore, there was the greatest protest and complaint against the service, and notably in New Orleans. The Railroad Commission itself took special notice of it and brought it up for serious consideration. We asked them for permission to retire that service and they declined. We continued it along for a couple of years, hoping that something might be solved out of it, but finally the situation got so desperate that I made a trip to Louisiana and New Orleans, and stated to the Chairman of the Commission, Mr. De Fuentes that the time had arrived that unless we would be permitted to retire that service

379 that the alternative would be that we would be compelled to actually close the New Orleans exchange, that our business reputation was in jeopardy and that something was bound to be done and that one or the other would have to take place, and thereupon we were permitted to discontinue the taking of further subscribers for the four, six and ten party lines, and since that time the service has been wonderfully improved.

Q. I will ask you to state whether or not the telephone rates and charges can be definitely ascertained and fixed with little consideration, or within a very short period of time, or with very little care and attention?

A. I have been making it a profession for eighteen years and have found it quite as difficult and intricate a problem as anything I ever undertook, and I therefore do not believe it is a question that can be determined off-hand or without very great care and without the very greatest degree of technical knowledge, skill and experience.

Q. Please state whether or not in places where the plaintiff company is the only company and there is no restraint or control on the part of the city or public officials or by contract or legislation or otherwise, whether the company can advance a rate or put out a new rate and compel the patrons to use the service whether they desire it or not?

380 A. It is absolutely impossible. The reasonableness and the fairness and the justness of the rate determines it entirely.

In other words, the use and value of the service is the whole consideration, just in proportion that it is made useful and valuable the public take it, regardless of any rules or laws.

Q. State whether or not in these various places just mentioned, the plaintiff company has, from time to time re-arranged its rates and put out a rate to see whether or not it would be popular or induce business and whether or not they would be withdrawn and new rates put out from time to time. Please explain that fully?

A. We have done this regularly. In other words, we have experimented with our business from time to time in such places, continuously during the eighteen years, and do so now, and we have experienced no animosity or trouble with the communities other than is ordinarily incident to such a business, but the whole procedure has been done in good faith and with the best intention and desire to develop the business fairly and properly and as much in the interest of the public service, knowing that throw that process alone could any patronage be secured or profitable business secured.

Q. State whether or not an exchange in a small or large place can be operated successfully at rates higher than a fair return to the owners of the property, and if not, explain why?

381 A. I do not think it can, for the reason that the public will not respond to it. After you pass a certain rating, such a percentage of your customers will fall out as will leave your service less valuable to those who remain, who in turn, have a right to consider the bargain they are getting, and therefore, it becomes the nicest sort of question to determine, and we have only been able to arrive at it by trying it with practical results, putting out rates and seeing what effect they have and what effect it will have on our business. In other words, an exchange at any given rate will command a certain number of subscribers, no matter what that rate may be, of course in ordinary reason, but that is limited. As that rate decreases the patronage will increase and also the expenses will increase, so that there comes a time where there has to be a halt and right in there is the nice question, to determine just how close a rate can be made to bring in the largest amount of business and therefore make the service of the greatest value, and at the same time, return a profit sufficient to keep the business vitalized.

Q. As the number of subscribers to an exchange increase, does the value to each patron increase or decrease?

A. It undoubtedly increases, for it gives him that much more of a possibility to use his service, and that is the thing that the demand is constantly made for, is to enlarge the facilities, not only the number of exchange subscribers in one exchange, but

382 throughout the exchange district or trade territory and also in additional toll lines and toll facilities. Right now we have pressure on us for the extension of the service to about Mansfield and New Rhodes on up the west bank of the Mississippi, and from that place called Rayville, I believe, or at any rate on the railroad between Vicksburg and Shreveport, along the railroads and water courses, running north and south; and along the e-st bank of the Mississippi River, on through to Lake Providence, from

Alexandria to Monroe, and Alexandria to Ruston, in every direction, through there, there is a very great request and pressure for the extension of the service, which we are utterly powerless to meet and respond to, for the reason that we have not the capital and can not secure the money with which to do so.

Q. State in this connection whether or not the expenses of conducting the business increases or decreases as the number of subscribers to the exchange increase or decrease?

A. The expenses increase just in proportion as the exchange increases in the number of the subscribers. This is recognized by all telephone engineers throughout the world.

Q. In other words, it is different from the ordinary idea that anything done in a wholesale way yields more profit than a smaller volume of business?

A. It is different from that principle, yes.

Q. Will you give some of the reasons for this?

383 A. It is because each man has a larger number of possibilities and uses these possibilities in a greater number. In other words, he sends more calls over his telephone when the exchange is large, than he does when the exchange is small. He is thereby in the attitude of sending twice or three times the number of calls for the same money, and this possibility exists with each one of the subscribers. It can also be likened to the span of a bridge. The cost of a span of a bridge, say twenty feet, would represent a certain unit of cost, but the span of a bridge of a thousand feet would be altogether out of proportion to the unit of cost in the first instance. It is also like the principle recognized by newspapers, those having a limited circulation, charge and receive only a small return for their advertising, space, and their advertising is considered of only small value, whereas, as their circulation or subscription list increases, the value of their advertising space increases in proportion.

Q. Now, that is giving the advantage derived by the patron. What are the additional expenses incurred by the company, aside from the additional operating expenses which you have mentioned?

A. A wholly different character of apparatus and appliance that are necessary to be used. An exchange of a certain number of subscribers, one switchboard would be used to handle the calls;

384 beyond that, two would be required and beyond that three and four, as the exchange rises. The large amount of trunking, from one exchange to the other and between the various exchanges within the same city, becomes enormous. In New Orleans today, two operators are required to handle the calls that were formerly handled by one, and these two operators can not handle as many calls as one operator formerly handled.

Q. Do I understand you to say that the cost of equipment per subscriber increases as the number of subscribers to the exchange increases?

A. It does, and as I say, this is a universally accepted fact by all telephone engineers throughout the world.

Q. Is flat rates for exchange service the proper way of selling telephone service?

A. It is not, it is distinctly unscientifi*f* and improper.

Q. Why is this so?

A. Simply because the business started that way and the public are trained into it and it seems impossible or impracticable to make the change.

Q. Has it been done in any place?

A. New York City is the only exception that I know of, that makes the rating entirely different and it is rated strictly in a scientifi*f* way, that is, charging for each and every message that passes through the exchange.

Q. In this way the small user pays less and the larger user pays more?

385 A. Yes, and on that basis, there can be and has been, a lowering of rates in proportion to the increase in use, but in that case, the rating was so much per message, and not so much per month for an unlimited use of the service.

Q. On the flat rate basis such as you are charging in the City of New Orleans for instance, does it not result that the smallest business user pays identically the same as the larger business user for the same character of equipment?

A. It does. And furthermore, in that arrangement it operates so that a very small per cent. of the public are paying for telephone use and the balance of the public are using it for nothing. That is to say, shop keepers and residences, for that matter, allow their friends and acquaintances and patrons and customers the use of the service absolutely free of charge, so that a great burden is put upon the system for which they alone are paying.

Q. I will ask you to state whether or not in the New Orleans exchange, the amount paid by your patrons in the aggregate equals as much as one half of one cent. per message?

A. I think it is about that amount. Perhaps about six tenths of a cent.

Q. What is the message rate in the City of New York?

A. I think three cents is the minimum rate and that in cases where a large number of calls are made per month.

Q. In other words, they give a lower rate for anyone asking for a number of messages and contracting for a number of

386 messages, he is given a lower rate than one contracting for a limited number?

A. That is true. As the number of messages contracted to be used increases in number the rate decreases until it reaches about three cents, which I think, is the minimum.

Q. I will ask you to state whether or not the proposed increases for submarine cables in the State of Louisiana are reasonable, fair and just compensation for the additional hazards, capital employed and risks taken by the company in giving service that way?

A. I think they are, undoubtedly.

Q. Has the matter been given much or little thought and study?

A. It has been given very careful thought, and when it is considered, the number of cables we have lost there within the last seven or eight years, if anything like that is to be continued in the future, certainly the rates we are asking are to be justified in every way. Right at this particular time, I believe with but one exception, every cable we have put in the Mississippi River North of Canal Street, in the City of New Orleans has been destroyed and in some places, replaced two or three times and are still gone, every cable crossing that river above Canal Street. In other words, from Canal Street, in New Orleans up to and including Helena, Ark., every cable across the Mississippi River, has been gone and I think there is but one working now. I believe we have but one
387 cable left in that entire stretch of river, and it in a crippled condition.

Q. Before getting to the question of depreciation, I want to ask you whether there is any practical difference in results to the public as to charges between constructing these plants in a *mover* substantial manner so as to reduce the depreciation, and constructing them in the manner in *in* which they are constructed, and increasing the depreciation. In other words, I take it that the more substantial a structure is, the less it depreciates per annum, and the more insecurely it is constructed, the more it depreciates per annum. Now, what is the net difference to the company or to its patrons in those two methods of development and construction?

A. Well, that is a very nice question indeed and one that is puzzling much more than it would appear. If the more substantial structure is put up, the interest account of course advances promptly, that is the amount of interest that will be required, but there may be, and of course is, a less degree of depreciation, but, on the other hand, which reaches the same result, where the property has grown obsolete, in other words, where it has to be taken down and put aside, not because it is worn out, but because its usefulness has ceased by reason of the fact that a better appliance and a
388 better way of doing it has been found, then, and under those circumstances, which I say is practically the same result, the depreciation would be greater. The property would not be rotted or rusted out, but it would be rendered useless and have to be abandoned and therefore, its greater value or greater cost at first, would have made it and does make it a greater loss sustained in the outcome. Now, that has been the problem that has been encountered in a practical way in the conduct of the business, the manner of distributing wires in the local exchanges, the character of switchboards, character of cables, all of these things have not only been superceded by different kinds, and while they have also, of course, worn out and therefore that question of depreciation has to be considered with all of that in mind, so it is no escape from the danger by saying you put up a more substantial structure and therefore you do not have to consider the element of depreciation or have to consider it of equal consequences as you would if the property were more cheaply constructed.

Q. What policy has the management of this property pursued in that respect, in the State of Louisiana?

A. It has exercised the best common sense that its engineers and officers could bring to bear upon the proposition and it has done so honestly and faithfully. It has done and to the best of its ability as I say, ex-rcised common sense to put up property that looked like it was best suited for the purposes and not to fool or or de-
389 lude themselves into the belief that they were making money when they were not. They have tried to look the problem fairly in the face and meet it, and this is exactly what it has done. In certain cases it has put up cheap property, because it looked like there would never be any requirement for anything better, and in other places they have put up a better property, because it looked like it would be required, and it has resulted that this problem, as I say, has been met face to face, and it has wrestled with this problem and has endeavored to the best of its ability and in the best of faith, to give its customers the best it possibly could for the money and to give the best service that the art was capable of, and have only sought and only asked for a common, ordinary return on the capital actually invested in the business.

Q. At best the telephone business is necessarily an irritating harassing business?

A. It is, and it grows out of the circumstance that when one calls over the telephone for one block or a thousand miles, and realizes that if the thing is in order and the party is there that such a wonderful achievement is made, but on the contrary, if it is out of order and they fail of their object, the disappointment is too great to be borne tranquilly, for the reason that any other alternative is so expensive and so full of delay. In other words, this irri-
390 tation emphasizes the superior and extraordinary value and facility that a telephone system offers, and when it fails at all, it is too great a disappointment to be borne with tranquil-ity.

Q. Mr. Caldwell, I will ask you to state what amount, if anything, the plaintiff company sets aside for depreciation?

A. Seven and a half per cent. has been the amount we have been using.

Q. Is that uniform throughout the whole system?

A. Yes sir that is what we have been holding out throughout the system.

Q. Do you regard that as fair between the State of Louisiana and the other parts of the system?

A. I do not think that is sufficient for Louisiana. I do not think that it is altogether safe. I have deluded myself, up until quite recently with the hope that it would be, but I have grave misgivings as to whether it is sufficient.

Q. Would anything else be safe or practicable.

A. I know that it would not be at all safe, or practicable. We have had experience enough to demonstrate that.

Q. Please state whether or not anyone is able to determine the amount of depreciation, without either examining carefully the records of the business or being familiar with the business?

391 A. I do not see how they could possibly do so.

Q. Does the amount of depreciation vary according to the different properties that may be under consideration?

A. They do. The great variety of things going into it, which are very numerous, all have a different life.

Q. Never having been engaged in the street railroad business or the steam railroad business, would you be able to determine, without careful study and investigation, what would be a proper amount to charge for depreciation?

A. I can not conceive how I could.

Q. You have stated in your former deposition, which is now on file and is to be a part of the evidence in this case, as well as the other one, that no prudent business manager of any property could afford to pay out by way of dividends, every dollars of its net earnings by way of dividends to its stockholders. I would like to ask you to state your experience as a business man with that question, in connection with the companies in which you have been interested or connected with the management?

A. I have been a stockholder in eighteen different corporations. I have been a director in fourteen during my business career. They are as follows; Tennessee Manufacturing Co., with a capital stock of one million dollars the Rock City Stove Works, iron foundry, stove factory, etc., capital stock one hundred and forty thousand dollars; Nashville Cooperage Co., saw-mill, planing mill and box fac-
392 tory, capital stock one hundred and fifty thousand dollars; Union Stock Yards Co., Nashville, being sheds, houses etc. for handling live stock, capital, $200,000; the East Tennessee Telephone Co., a telephone company operating in the eastern part of Tennessee and Kentucky, with a capital of $300,000; Merchants National Bank, of Nashville, with a capital stock of $200,000; the Overland Street Railroad Co., capital stock $200,000; the First National Bank of Nashville, capital stock of $500,000; the Fourth National Bank of Nashville, capital stock at one time of a million dollars, now six hundred thousand dollars; Prewett-Spurr Manufacturnig Co., saw, planing mill and bucket factory, capital stock $100,000; Waverly Building Company, engaged in the building of houses, with a capital stock of one hundred thousand dollars; Butchers and Drovers Stock Yards, yards and sheds for handling live stock, with a capital stock of $35,000; the City Savings Bank, with a capital stock of $100,000; the First Savings Bank & Trust Co. capital $300,000; Realty Savings Bank and Trust Co., capital stock $300,000; Nashville Woolen Mills, capital stock $200,000; Noel Milling Co., flour mills, capital stock of $400,000; and the Cumberland Telephone and Telegraph Co., with a present capital stock of twenty millions. As I say, I have been a stockholder in all of these concerns, I was a director in fourteen of them at one time or another. All of these concerns that failed to make a liberal
393 recognition of the depreciation account, or provide a large contingency fund, either failed outright or proved unprofitable and retired from business, and they are as follows; The

Tennessee Manufacturing Co., failed entirely, because it failed to provide for its depreciation; the Rock City Stove Co. did the same identical thing; the Nashville Cooperage Co., the same thing. Those are the concerns proving absolute failures, there was a division in the board of directors, the majority thinking that it was unnecessary and that the business was prosperous and large dividends were earned and should be paid. As I say, this was the majority view, and it obtained and carried and the concerns proved absolutely bankrupts. Others that did not prove absolute bankrupts but had to be re-organized for the same identical reason, was the East Tennessee Telephone Co., the Overland Street Railroad Co., the First National Bank, and in its early stages the Cumberland Telephone and Telegraph Co., solely for the reason that they did not provide a sufficient contingent fund or depreciation fund as it is indiscriminately known and called, brought them to grief. Speaking for the plaintiff in this case, the Cumberland Telephone and Telegraph Co., up to the year 1890 it had made no recognition of its depreciation, but had paid dividends ranging from six to eight per cent. and at that period it found itself without credit, its note for five thousand dollars
394 could not be sold or would not raise the money in a single bank in Nashville and its plant was in a dilapidated condition, without money or funds to resur-ect it. Myself and other gentlemen still on the directory, came into the management of it at that time, loaned our individual names to the extent of $350,000 to raise money to meet its necessary reconstruction items, the dividend was cut to four per cent. where it remained for many years, and it was through that process that the company was carried to anything like its standing and credit and usefulness. The First National Bank paid large dividends, and not providing for its contingent or surplus fund, was re-organized, its capital being cut from $500,000 to $200,000, so that I feel that my actual experience has been sufficient to cause me to have some practical knowledge of the question, and I state emphatically that any concern that does not provide and provide liberally for its contingent or depreciation fund will ultimately come to grief, just as much so as an individual that sets about and spends his entire income, sooner or later he has no principal or capital left. On the contrary now, the concerns I have enumerated in the foregoing list, who recognized this principle and provided liberally for their contingencies and depreciation, are today prosperous and profitable institutions, profitable to their stockholders and useful to their customers.

Q. I believe you have stated in your other deposition that the company does not maintain a separate treasury or a separate
395 place where it keeps its deferred maintenance and surplus funds, separate and distinct from its general funds, that it uses in its business, but that all of its funds are invested in telephone plants and appliances?

A. It is invested back in its own business.

Q. Now, I will ask you to state who gets the benefit of that sur-

plus whatever it may be, the patrons of the company or the stockholders of the company?

A. It is all devoted to the public use, there is no dividend or interest paid, except upon the actual capital paid in and there is no return paid and no interest paid on the capital that is carried on the surplus account. That fund is entirely employed in the public service, without any return being paid thereon at all to the stockholders.

Q. Have you had any estimates made with respect to what is the taxes of this company or what they will be in Louisiana in 1907?

A. I have, and they will amount to over a hundred thousand dollars.

Q. The valuation of the company is placed at what?

A. It is placed at about three millions of dollars.

Q. The company, I believe, pays a tax of one per cent. on its gross earnings by way of privilege taxes to the state and its various municipalities?

A. I don't know what the various taxes are, but there are
396 a variety of taxes. I only took the aggregate.

Q. I will ask you to state some of the risks and repairs and expenses incurred by the company that do not seem to attract any attention. I refer to the equipments in the hotels in the City of New Orleans for telephone service.

A. Well, interior wiring altogether seems to attract very little notice or attention, and yet we have in the St. Charles alone, an investment of about eight thousand dollars; we have in the new Grunewald something like fifteen thousand dollars invested; in the new Deneshaw and the Cosmopolitan, there is about eight thousand dollars. We are figuring on a very large and extensive equipment for an establishment known as the Mason Blanche that is estimated to be something like fifteen thousand dollars and considering the interior wiring and the various private and special concerns, this goes up into a large amount of money, the upshot of which is altogether uncertain and temporary. It is temporary in two ways, that they change their opinions and conclude they do not want to continue in that way at all, and it is thrown away, and the dampness that hangs around on the walls, affects the insulation on that wire and the corrosion and rust is very rapid, so as I say, the upshot of all that investment is that it is bound to be temporary and the depreciation on it very great. This is a new line of business, only having been inaugurated in the last few years, and in the case of the railroads which were the first equipped with such things, we are re-
397 newing them now, and they have been in operation not more than three years.

Q. Can any appreciable part of this material used in interior equipment be taken out?

A. No, very little of it, because it is, in many cases under the plaster, most of it is under the wall coverings, and the other is placed around in inaccessible nooks and corners so that it could not be taken out in any practical way, or practical manner so, has simply to stay there and end its life.

Q. Why is it that the telephone companies wire a customer's house for telephone service, whereas the electric light companies and water companies and the gas companies require the patrons to put in their own plumbing and wiring and meet the company at the street or on the outside of the house?

A. It simply grew out of the anxiety of telephone companies to introduce and extend their business, trying to popularize it and straining itself to the utmost to build up a business and make it a public necessity. Or, in other words, to give it sufficient value to make it popular and universally used.

Q. Is this interior wiring ever taken out or is it practical to take it out?

A. I don't know of a single instance where it has ever been taken out. The wire itself, hardly pays to remove it, and when
398 you consider the damage done to the premises in trying to remove it, and the repairs to be made thereafter, it is not worth taking it out, therefore, I do not know of any cases where they take it out.

Q. This is copper wire, too, isn't it?

A. Yes sir, almost in every case, fine, insulated copper wire, and then the lightening arresters, the ground rods that are used are driven in the ground from four to five feet and they are almost impossible to be pulled up except with a derrick and they are consequently left there. You really can not take the thing out, it becomes a fixture to the premises.

Q. Mr. Caldwell, it is generally assumed by the public, that if a telephone company has as many subscribers at the end of the year as it had at the beginning of the year, that it has not incurred any expense in installing the telephones. Is this true or not?

A. To keep the growth level new customers have to be found to take the place of those who naturally retire because of death and failures and all the sundry causes that cause people to cease using the service. All such vacancies have to be met with new subscribers, therefore, if there was not a gain of a single subscriber, it would yet follow that a very large amount of work and a very large expense had been met to hold that level, and this idea would hold true
399 where there is a growth shown, that that growth is bound to be represented by a very large number of new instruments put in and others taken out, and they are not put in the same place that the others are taken out from, but in the great majority of cases, they are put in at new locations, which requires new interior wiring and installation expenses.

Q. Mr. Caldwell, please state the number of telephones installed each year, and the number of telephones discontinued each year, and the net increase from year to year, from 1903 to 1906, inclusive.

A. The company had, on Jan. 1, 1903, 92,425 subscribers; during the year it put in 45,241 new subscribers' stations, and took out 33,922, handling 79,163 telephones, in order to make a net gain of 11,319; and in the same manner, for 1904, the subscribers were 103,744, put in during the year, 49,389, take-outs 31,820; net gain,

17,569; handled during the year 81,209. 1905, Jan. 1, subscribers, 121,313; put in 51,106; take outs 31,153, net gain 19,953; handled during the year, 82,259; Jan. 1, 1906, subscribers 141,266; put in during the year 59,354, take out-, 35,430, net gain 23,924; handled during the year, 94,784.

Q. I will ask you to state whether or not, in your opinion, it is necessary for the properties of the plaintiff company to show an increase in earnings in order to justify its continued prosperity or its continued serving of the public? If so, give reasons for your answer.

A. The company finds itself face to face with this proposition: its stock, which is all paid up, and represents the experience
400 of the business for 25 years, is quoted in the market at 103, that means a few straggling and ordinary transactions. If large amounts were being offered, that price would drop considerably, so that you may say that its stock will not command a market value of anything appreciably above par. There is no market for its bonds. It already has a floating indebtedness of nearly three million- of dollars, and it dare not increase that. So, if it is to perform any service whatever, further, to the public, it has to do something to make it more attractive, it has to have a better revenue and make a better showing, in order that investors may have more confidence in its securities, and as it has no means of income except its business, its rates have to be improved, for it has exhausted itself on the matter of curtailing expenses, and therefore, as I say, if it cannot get an increase in its revenues and its rates, its usefulness is at an end, and it will be utterly impossible for it to better its condition, better its service or to extend it at all. It is face to face with that proposition, and there is no appeal from it.

Q. Please state whether or not a telephone property or system can be operated as a finished property in the same manner and to the same degree, or to any degree, as a street railroad or a steam railroad property or any other industrial enterprise can be operated?

A. As a telephone system's value depends entirely upon its connection and saturation of its system, its use and its value de-
401 pend entirely upon its continued growth and development and this must be done until the communities are practically saturated. That has not been done to any appreciable extent. Not only is this true with reference to exchanges, but also with reference to territory, for, as I have stated before in this deposition, there are vast regions in Louisiana in which there is no telephone development to speak of, either exchange or toll lines. This is very important and very desirable from every standpoint to do. The company would gladly do it if it were possible for it would add to the value of its service to its present customers, which would give it very much better standing with them, for it would be providing them with additional and increased facilities, and therefore, until the territory is saturated up to a full percentage, a normal percentage of the telephone growth of the state, it is bound to be considered as incomplete and unsatisfactory, and this growth and development must come out of the new capital and this new capital must be induced to invest on the business by reason of the fact that the business

itself affords and offers an attractiveness and this can only be done by adequate rates.

Q. Please state whether or not the present low price of the company's stock is attributable in any respect, in your opinion, to the fact that the stockholders are uneasy for fear that the company will be unable to issue new stock and develop its business and thereby result in a falling off, and a going to pieces of its present business?

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A. That, undoubtedly, is one of the very grave reasons for the price of the stock, for telephone stockholders recognize that unless there is sufficient capital to make the business complete, that the present investment will be more or less precarious.

Cross-examination.

By Mr. McCaleb, for Defendant:

Q. Didn't the company this week increase its capital stock $200,000?

A. It voted to increase the authorized capital stock $200,000 which was to complete a stock issue transaction which was made last February. The deferred payments on a part of which would mature the first of next October.

Q. Now all this floating indebtedness that the company has from time to time, is not that taken up by the issuance of stock, as the floating indebtedness matures?

A. Yes sir that is the way that has been done in the past. This present indebtedness now comes up since this last issue was made, or, in other words, the last issue did not provide for all the floating indebtedness at that time, part of it was left over and it has been increased, partly, since, and the remaining unpaid part of the capital stock to come in is about one half of a million dollars so we have a stock issued to offset this floating indebtedness of about five hundred thousand dollars, and the balance of it is unprovided for and will have to be taken care of entirely by future transactions.

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Q. Has the company encountered any difficulty in providing for the issuance of stock?

A. Its last issue of stock was not as popular and not sufficiently popular to warrant the directors in presuming that it could be repeated.

Q. But, in the past?

A. In the past, and up until last February they were able to make these issues of stock in sufficient amounts to meet its requirements, but at the time the last issue of stock was put out, the stock had a good market value, of $117 to $118 and while that issue was being taken and pending it, the sale of stock carried the stock down to $110, which has since weakened and it is now down to $103 and $103.50.

Q. During the past seven or eight years what was the highest market quotations on the stock?

A. If it passed $135 I do not recall it. I carry in my mind that

the highest price that the stock ever sold for was $135. Perhaps there might have been one or two sales made at $140.

Q. What was the lowest price?

A. The lowest price since the company was put on a seven per cent. dividend is the present time, $103. It was $105 immediately after it went to seven per cent., but gradually rose from that to $135, and it is now at the lowest price.

404

Q. Now, what was the dividends of the company for the years 1894 to 1907 inclusive?

A. In 1894, four per cent. and it remained at four per cent. up to the year 1898; in the year 1898 it was five per cent.; in 1899 it was six per cent.; in 1900 it was seven per cent., which it has been ever since.

Q. I show you two statements dated February and March 1907, of the company's business, marked Exhibits Nos. 1 and 2, and will ask you to state if those statements were issued by the company and if the statements made therein are correct?

A. These statements represent the monthly operations of receipts and expenses as shown on their face, and eminated from the company's office, and they are correct and I attach them to my deposition as Exhibits Nos. 1 and 2.

Q. In respect to the interior wiring about which you have testified, where a customer discontinues his telephone is that wiring in the building taken out or is it left there?

A. It is left there in almost every case.

Q. And if he resumes his business relations with the company, does the company use that wiring in re-connecting him?

A. It would wherever it found it possible and practicable.

405

Q. Isn't it a fact that most residences in the City of New Orleans and in the State of Louisiana are wired with this interior wiring in this way, where the patron had business relations with the company?

A. Yes, that is the habit of wiring them there, using the ordinary interior wire for reaching the place in the residence where the telephone is desired to be placed.

Q. Doesn't it often occur that the patron requests the discontinuance of his service and for a month or two or three or six months or a year and then resumes?

A. Yes that sometimes happens.

Q. In the case of moving a telephone from one residence or one place of business to another, where a subscriber changes his residence or place of business, isn't he required to pay the cost of such removal?

A. We try to collect for the cost of it, but are not always successful in doing so, but we think it is right and proper to do so, and try to do it.

Q. And where you don't collect, does that appear on the books as a part of the bad debts?

A. No sir. Those charges are not carried into the books until they are collected.

Q. Under what item of revenue does that collection appear?

A. I should say it would be in miscellaneous, it is such a small amount that I do not recollect it.

406 Q. Where a patron takes a telephone for a short period of time, contracts for a short period of time, less than a year, isn't he required to pay for the cost of installation and removal?

A. No sir I think not. In some isolated cases we may be successful at it, but it is a mere trifle.

Q. But isn't it a fact, nevertheless that you do that?

A. We try to make it and think we should.

Q. Isn't it a fact that you do collect for installation and removal, in cases of that kind?

A. As I say, from my own knowledge I do not know. If it is, it is such a trifling affair it has never reached my knowledge.

Q. On this subject of depreciation, as I understand your testimony, the depreciation does not only involve the deterioration of the material of the plant, but as well where the apparatus and material become obsolete, is that correct?

A. Yes, that must be considered, as well as the actual rust and rot.

Q. In other words, if some new invention was to appear, you would consider the rebuilding of an existing exchange or an existing plant?

A. Yes sir, even though the property was not worn out.

Q. And that matter is involved in the question of depreciation?

407 A. That thing must be involved in it.

Q. And this is a fact, notwithstanding that the apparatus and material could be used for telephone service?

A. Yes, that is true.

Q. Now, has this seven and a half per cent. for depreciation ever been used in any one year?

A. The amount of it?

Q. Yes?

A. Yes, in some specific year, I should say yes, and perhaps on several occasions, but just what years, they do not now come to me.

Q. I will ask you to state as to the State of Louisiana?

A. I would say in the State of Louisiana it has.

Q. That is, seven and one half per cent. of the cost of construction?

A. Of course the tremendous problem that the telephone company has to confront, it is that vast toll line and construction in the city, which has been built within eight years, and on top of that tremendous exchange development in the City of New Orleans, most of which has now been built within eight years. What will be the upshot when that big development comes around for its renewal then, the accumulated fund which is being provided for that, will be put to its test and it is my fixed belief that it is in no sense over considered, but if anything, that it will not be found sufficient

408 for the reason, among other things, that the cost of rebuilding that property is in all human probability going to be largely more expensive. It certainly would be considerably more expensive now than when first built, and this seven and a half per cent. has been calculated on the cost of that property and not the price that

would be required to rebuild it now or that might be required to replace it when it should become necessary.

Q. Isn't there, at the end of each and every year, a surplus on hand?

A. Yes, we have not dared to pay out the apparent earnings of the company, nor have we felt we were justified in considering that the mere difference between the receipts and disbursements were net profits.

Q. Isn't this surplus over and above the amount paid for dividends and the amount set aside for depreciation?

A. Yes sir it is, for prudence causes us to know that even above that, we dare not pay out in dividends all apparent earnings, as I said before it is like a man who would be guilty of spending his entire income and he sooner or later will find his principal depleted if not absolutely gone. A prudent regard for permanency and the usefulness the company is expected to serve, has caused the directors of the company to say that they dare not do either of two things, dare not disregard the question of depreciation or the fund that has to be set aside for that purpose, and then, they dare not pay
409 out in dividends what appears to be the amount of money left, but that that should still be kept as an additional reserve fund to meet requirements and disasters that may come and that in all human probability will come, at some time in the life of the company, no matter what form that may come in. As, for instance, the telephone company in San Francisco never believed their property would be destroyed by earthquake. The one in Baltimore did not think their plant would ever be crippled as it was by that fire. These extraordinary events do not come in every year or in every generation, but they do come in the life of a permanent estate, it is liable to be disastrous and will be very disastrous, unless very ample provision has been made to protect against it. As, for instance, in one of the concerns I referred to before in this City, the Fourth National Bank, in which I was a director, pursued this course of using extra precautions and prudence in piling up a surplus. In the year 1893, all of that was wiped out and but for that circumstance its capital would have been impaired, but having provided that extra contingency, it was able to go through, maintain its credit, and its usefulness and remain in tact.

Q. Doesn't the company carry insurance on its property?

A. It carries against certain parts, that is, the large values in the cities, and towns, but in the smaller places and on its country property, it does not.

Q. As I understand your answer, it insures nearly all the
410 larger values.

A. It tries to insure about eighty per cent. of its large values in congested localities. Outside of that, the rates, to begin with, are too high and the difficulty of getting insurance at all is great and hence the company carries the risks itself.

Q. Are any of your subscribers in Louisiana, stockholders of the company?

A. Yes, we have some subscribers in New Orleans that are stockholders.

A. Has the company ever made it a condition precedent to establishing an exchange to require that those desiring telephone service should subscribe to the capital stock?

A. I do not recall that it has done so in Louisiana, although in its territory it has but it has not said a person must subscribe and be a stockholder to get service, it has and it is a fact that it has said to open an exchange in a locality that the condition would be that some individuals in that locality would have to subscribe for a certain amount of stock. We are trying that experiment in many places right now, to see what can be done along that line, but I do not recall that we have attempted it or tried it much at any point in Louisiana.

Q. As I understand it, the company owns improved real estate in Louisiana?

A. Yes, it does.

411 Q. At Shreveport and New Orleans?

A. Yes sir.

Q. Do you know the cost of that property, approximately, to the company?

A. I think that it is about a hundred and fifty thousand dollars.

Q. That was the cost in both New Orleans and Shreveport?

A. I think that is approximately it.

Q. Hasn't the improved real estate of the company increased in value from the time you purchased that property?

A. I expect it could be sold for more money, but we are not carrying it at any greater amount on our books, nor does it bring us in any greater income for we occupy it ourselves.

Q. But, don't you charge up as a part of your expenses the rental value of that property, against the exchange?

A. Yes, that is charged up, the rental value is charged against the exchange and real estate is given credit for that income, so, it is a mere matter of book-keeping. That is done to show what the telephone business itself is doing.

Q. In other words, if you were to rent this property to outside parties, you would receive this revenue from them and not from your exchange?

412 A. Yes from them and not from ourselves, but, in turn, we would have to rent other quarters which we would have to pay for. As I say, that operation is one of book-keeping, and we credit that income with whatever we charge expense with on that account.

Q. Therefore, there is no depreciation of this real estate in Louisiana?

A. I would say that there would be a very slight depreciation in the total value of the property, considered at its market condition today. While the house would be depreciated, the appreciation in the value of the land might offset that and likely would.

Q. What would be the difference in revenue, under the rates in

Order No. 552, if the night rates are made the same as the day rates under that order?

A. I would say that there would be a very small difference in the result.

Q. Do you think it would be anywhere in the neighborhood of ten thousand dollars?

A. No, I don't think it would amount to ten thousand dollars.

Q. What would be the result of increasing the night rates now to the present day rates under Order No. 488?

A. I think it would produce an increase a little to the rise of forty thousand dollars per annum.

413 Q. If it would increase it forty thousand dollars under the proposed abolition of the night rate, why wouldn't it decrease it under the abbolution of the night rate, making it the same as the day rate, under Order No. 552?

A. To be specific, if we were permitted to do away with the night rate, it would produce an increased income of about forty thousand dollars. If the rates made by the Commission under Order No. 552 were put into commission, we think that would decrease the revenues about the same amount.

Q. Mr. Caldwell, you testified that if this company was to liquidate that the value of its property would not bring twenty five per cent. of its cost?

A. I think that would cover it.

Q. By that you mean, if the company dismantled its plants or went out of the business?

A. Yes sir.

Q. Now, what would that property be worth if you were to sell it to some other telephone company desiring to continue the telephone service?

A. On its present basis it would be just worth par, for that is represented exactly in its market securities, it is offering itself for sale, that is, some of its partners are offering their interests for sale every day. and it represents just that value.

414 Q. I wish to ask you with reference to the purchase by this company of the Peoples Telephone Company. When did this company buy out the property and franchises of the Peoples Telephone Company?

A. It never bought its franchises, had no need for it, and didn't buy them. It bought its properties, from time to time, in parcels, covering the years commencing with about 1901 or 1902, somewhere along there, and I think the last of it was purchased two or three years ago.

Q. I have here a copy of an agreement of purchase between the Peoples Telephone Company and the Cumberland Telephone and Telegraph Company, and ask you to read it and say if it does not exhibit the transaction?

A. This was the original transaction, but that got into litigation and took a different shoot entirely from this, so that when it was completed, it was as I told you.

Q. What did this company pay for the conduits of the Peoples Telephone Company?

A. I would have to look at the books to get that.

Q. I wish you would furnish that?

A. I will do so, with pleasure.

Q. And let me know what you paid for the telephone cables and poles?

A. I will give you a complete list of that.

Q. I understand you did not buy the switchboards?

415 A. No sir, we bought the poles and wires and the cables and conduits, or that part that was useful to us or that we could use in the service there. I will furnish you the figures and file it as Exhibit No. 3 to my deposition.

Q. I will ask you did the Cumberland Telephone Company take over the subscribers of the Peoples Telephone Company, using the Peoples telephone exchange?

A. It did not, no sir.

Q. Then, when the Cumberland Telephone Company bought out the conduits, cables, wires and poles of the Peoples Telephone Co., the Peoples Telephone Company went out of business, necessarily?

A. Yes sir, it had but a small business left and it just closed down and went out of business.

Q. Can you give me a statement of the cost of the conduits laid by your company in the City of New Orleans, which are now in use?

A. I will furnish it and mark it Exhibit No. 4.

Q. And also, the cost of the insulated wire and cables passing through these conduits, you call these separate, do you not?

A. Yes sir.

Q. Then, also, the cost of these wires and cables passing through the conduits?

A. I will do so. I will put them both in the same statement and file it, marked Exhibit No. 4.

416 Q. Now, from what company account did the company pay for the purchase of the conduits, wires, poles and cables of the Peoples Telephone Co.?

A. It was charged right into construction, at cost.

Q. Was it from the capital and surplus account?

A. From the capital account.

Q. That capital account consists of the capital and surplus?

A. The capital account is one thing and the surplus account, of course, is another.

Q. But, it is all called capital account?

A. Yes, ordinarily, that would be represented by the same class of property.

Q. So, as the purchase was made from the capital account, it was made from the general funds, consisting of the subscriptions to capital stock and the surplus on hand, is that correct?

A. In other words, the money that was raised to pay for that, came out of the capital account.

Q. Are any independent telephone toll stations kept open at night, such as plantation stations and rural post-office stations?

A. That is a matter of individual concern that we have no con-

trol over and don't know what they do about it. Private stations like that, some answer at night and some will not. That is a matter of private affairs, like a residence, very much or any place of business.

417 Q. You speak of seven per cent. being the current rate of interest in New Orleans. You refer to the present time?

A. Yes, and for some time past.

Q. Don't you know, as a matter of fact, that the rates of interest are very high in New Orleans in the months of July, August, September, October and November, and that they are very low in the months of December, January, February and March and April?

A. No sir I do not know that circumstance to be true, but our experience, as far as I know has been that they are high all the time.

Q. Does not that, at any rate, depend upon the conditions of the money market?

A. The rates of interest do vary as a matter of course, and in accordance with the conditions of the times and in that respect, they are different from telephone rates.

Further this deponent saith not.

(Signed) JAMES C. CALDWELL.

Sworn to when given and subscribed to before me on this the 10th day of August, 1907.

(Signed) BUFORD DUKE,

[SEAL.] *Stenographer and Notary Public.*

418 EXHIBIT # 3.

Cost of underground ducts and cables constructed by Cumberland Telephone & Telegraph Company in New Orleans, La., to June 30th 1907..... $383,115.77

Account is not carried on the books so as to separate the cost of the cables from the ducts.

419 EXHIBIT # 4.

(A) Underground conduits and cables purchased from Peoples Telephone Company, at New Orleans, La., for which we paid..... $28,500.00

(B) Aggregate amount of poles, wires, and aerial cables purchased from the Peoples Telephone Company at New Orleans La., from time to time..... $30,325.00

420 J. G. WRAY, the next witness called, being duly sworn, deposes as follows:—

Direct examination.

By Mr. GRANBERY, for the Plaintiff:

Q. Mr. Wray, you are a citizen of Chicago, Ill., and Chief Engineer of the Chicago Telephone Company, are you?

A. I am.

Q. You were requested over the telephone, by Mr. Granbery, to be in Nashville to-day to give your deposition, were you?

A. I was.

Q. And you are here in response to that request?

A. I am.

Q. How long have you been engaged in the telephone engineering business?

A. Nearly fifteen years.

Q. Have you had much or little experience, during that time, in the construction, maintenance and reconstruction of telephone properties?

A. I have; I have been successively assistant chief engineer, assistant superintendent of maintenance, superintendent of maintenance, electrical engineer, and chief engineer of the company; also superintendent of equipment for a period of about a year.

Q. I will ask you to state whether or not you have gone over the number of exchanges of the plaintiff company located in the
421 State of Louisiana and the points at which they are located, with a view of arriving at an estimate on the question of depreciation?

A. I have looked over the matter, and have seen some figures with regard to the exchanges and the number of telephones in each exchange, and the character of the equipment.

Q. Have you also gone over the toll lines in the same way?

A. Yes, I have, in a superficial way.

Q. I will ask you to state what, in your opinion, would be a fair amount to set aside each year on the cost of the property, for depreciation?

A. With the conditions as I understand them to be in the State of Louisiana, I believe that at least ten per cent. should be set aside.

Q. You mean ten per cent. of the cost of the plant?

A. Ten per cent. of the amount invested in plant.

Q. I hand you a pamphlet entitled Report of Special Telephone Commission, Chicago, April, 1907, and ask you to state what it is?

A. It is a report made by a special commission of three engineers appointed by a committee of the Chicago City Council, to investigate the telephone situation in Chicago, and to assist the Committee in determining what would be fair rates in a proposed new ordinance for the Chicago Telephone Company. This Commission was composed of three well known engineers, Prof. Dougal C. Jackson,

at the head of the Department of Electrical Engineering in
422 the Massachusetts Institute of Technology, was Chairman; Mr. Wm. H. Crum, a well known contractor, and the builder of many telephone exchanges for independent telephone companies, and Prof. G. W. Welder, formerly professor of Telephone engineering, of the Armour Institute of Technology, in Chicago, but now a consulting engineer.

Q. Did you have personal contact with this committee during the time of its investigation of this matter?

A. I did.

Q. How long was that committee engaged in this work?

A. About five months actively.

Q. Is this a copy of the report made by that Committee to the Committee of the City Council?

A. It is.

Q. Will you attach it as Exhibit No. 1 to your deposition?

A. I will.

Counsel for defendant specially objects to the introduction of the documentary evidence, on the ground that it is not made by the witness, and he is not a member of the commission, and it has no relevancy to the matter in issue.

Q. Does the report of that telephone commission deal with the question of depreciation?

A. It does.

Q. What amount did that committee state was proper amount for depreciation to be allowed on a telephone plant in Chicago?

423 A. They recommended a depreciation of 8.2 per cent.

Q. What did the Chicago Telephone Company insist upon, what per cent. did the Chicago Telephone Company insist upon?

A. We urged upon a depreciation figure of 10.9 per cent.

Q. What did the engineer of the proposed new company insist upon?

A. As I remember, it was in the neighborhood of 5 or 6 per cent.; I will have to look at the figures; it is 7.2 per cent.

Q. I will ask you to state whether or not in the tables given in this report whether or not the different items of construction are shown, its cost, and its life and the per cent. of depreciation?

A. Those facts are given in the report.

Q. Are those facts in reference to the Chicago Telephone Company's experience correct?

A. Yes sir.

Q. Is this depreciation that you speak of separate and apart from the maintenance of the property?

A. It is.

Q. Mr. Wray, please state the information received by you in regard to the plaintiff company's properties in the State of Louisiana, upon which you based your opinion that it is necessary to set aside a depreciation fund of ten per cent. per annum?

A. The items of plant which suffer greatest from depreciation, or

in other words, which have the shortest life, are the pole lines,
424 with air wires, the cables, the instruments, and the central office switch boards. Underground conduits and cables and buildings, particularly fire proof buildings, have a much longer life than the items of plant just enumerated. In a country with a humid atmosphere, the depreciation of poles and cross-arms is particularly rapid; this is also true of iron wire, which I understand is largely used.

Q. The life of the different items and the amount of depreciation for the same as shown in the pamphlet attached to your deposition was with reference to the city of Chicago, is that correct?

A. It was.

Q. The amounts of the different materials used in that plant are shown in the pamphlet, are they not, on these tables?

A. They are.

Cross-examination:

Q. Mr. Wray, have you been employed by the Cumberland Telephone Company to testify in this case as an expert?

A. I have not.

Q. You come here freely of your own accord, and at the request of the Cumberland Telephone Company?

A. Of Mr. Granbery.

Q. Are you in any way connected with the American Bell Telephone Company?

A. I am employed by the Chicago Telephone Company, which is a licensee of the American Bell Telephone Company.

Q. Isn't the Cumberland Telephone Company likewise a
425 licensee of the American Bell?

A. I understand it to be so.

Q. So you are not expecting any consideration for your expert testimony in this case?

A. None whatever.

Q. Your expenses, however, will be paid by the Cumberland Telephone Company, you expect that?

A. I expect that, yes sir.

Q. Do you come here under any contract had between the American Bell Telephone Company and its licensees?

A. No sir.

Q. Are you an engineer of the American Bell Telephone Company?

A. No sir.

Q. Now have you made any personal inspection of the property of the Cumberland Telephone Company in Louisiana?

A. No sir.

Q. Have you ever been in Louisiana?

A. No sir.

Q. So your opinion as to the depreciation which should be charged on the property of the Cumberland Company in Louisiana is based entirely upon hearsay, what you got from other persons?

A. It is based upon my knowledge of conditions in general through the country, and upon my hearsay knowledge that they use a considerable amount of iron wire; well of my knowledge from government reports that the atmosphere there is humid, par-
426 ticularly along the seashore, low swampy land.

Q. Are there any lines in the State of Louisiana along the seashore?

A. Along in the vicinity of the seashore.

Q. What is the closest line to the seashore?

A. I couldn't say definitely.

Q. How far from the seashore would you consider the atmosphere saline or salt?

A. I have no accurate knowledge; it is my recollection that companies have had trouble with lines and with switchboards that were within ten or fifteen miles of the seashore, perhaps further.

Q. Well, is not Chicago on Lake Michigan?

A. It is.

Q. There is no salt there is there?

A. No sir.

Q. Isn't the atmosphere humid, from the fact that it is on one of the great lakes?

A. Very seldom; we have had just occasionally a humid atmosphere, lasting for a day or two.

Q. Isn't it a fact that humid atmospheres are located along large bodies of water?

A. It is.

Q. And Lake Michigan is a large body of water?

A. It is, but it must be remembered that the land lying along the lake is high and not low and marshy, and it must be remem-
427 bered also that in the summer when we would expect the humid atmosphere, the winds are from the north and west, over the prairies.

Q. Isn't it a fact that there are no elevations in Chicago proper?

A. Chicago lies from 8 or 10 feet above the lake up to 30 or 40 feet above.

Q. But there are no materially high elevations in the vicinity of Lake Michigan?

A. No, not right near by; a little ways north, ten miles north, we run 150 feet.

Q. Chicago, I believe, is one of the lowest parts bordering on Lake Michigan?

A. It is.

Q. Mr. Wray, you stated that from some information received that the larger part of the line of the Cumberland Telephone Company in Louisiana consisted of iron wire?

A. I do not recall that I said that, but that I meant or said that they used a larger proportion of iron wire than other companies, that is, than our company—a much larger proportion; I did not mean that the larger part of the investment in Louisiana was iron wire.

Q. How many miles of iron wire does your company use in Chicago?

A. In Chicago?

Q. Or within the radius of your territory?

A. I will guess at it, but probably not more than 100 miles all told.

428 Q. What do you use on toll lines?

A. Copper.

Q. What is the extent of the Chicago Telephone Co., the area covered, of its system?

A. Its area is covered by a radius of about 50 miles out from Chicago; I cannot give you the figures in square miles, but it is relatively small.

Q. Do you know the area covered by the system of the Cumberland Telephone Company in Louisiana?

A. I do not happen to know that.

Q. According to the last report, made June 30th, 1906, by the Cumberland Telephone Company, there were 15,988 miles of iron wire, 11,299.82 miles of copper wire, and 1,023,083 feet of cable. How is that cable divided? What is meant by cable?

A. By cable we mean the grouping of a great number of lines, perhaps a hundred lines, perhaps two hundred or three hundred lines in one lead sheath, comparable to a lead pipe. That is done to improve the service and to reduce the maintenance cost, and to make possible the carrying of a large number of wires on a single pole line.

Q. You are not aware of the fact that the miles of iron wire maintained by the Cumberland Telephone Company in Louisiana are located in the northern part of the State, in which it is hilly, or in the southern part of the State, which is level?

429 A. I do not know the distribution of the iron wire, but I do understand that it is used largely in the cities and towns along the southern coast, and in conditions where we do not use it in Chicago.

Q. Wouldn't it be better evidence of good management for the company to use the copper wire in the southern part of the State, or along the coast and in the large cities, rather than using the iron wire in that section?

A. I am not in a position to criticise the management but it should be borne in mind that the use of copper wire involves a much larger expenditure of money for plant, and further the expenditure of money for a better pole, for copper has a longer life.

Q. However, you do not know how this wire is distributed, whether the iron wire is distributed over the northern section of the State or over the southern or coast-wise section of the State?

A. I don't know.

Q. Did you examine the books of the Cumberland Telephone Company?

A. No sir.

Q. Then what you testify to here is entirely from hearsay?

A. It is entirely from hearsay regarding certain facts pertaining

to this company, but largely from my past experience and knowledge of conditions in general.

Q. But as to Louisiana, your conclusions are derived from what you heard from others, your conclusions of fact are derived from what you have heard from others, is that correct?

430 A. I must qualify that answer, because, had I known nothing whatever of Louisiana conditions, I could safely have placed a limit of at least eight per cent. for depreciation—at least that, and with the information which I got in regard to the proportion of plant investment in short lived equipment, and with the understanding that I have of the weather conditions, I believe that the percentage should be at least ten per cent.

Q. Now what do you understand by depreciation?

A. Depreciation is the amount of money which a company should set aside each year to compensate for the wear and tear of its plant, to provide for improvements in the art, and to make possible such alterations in the plant as may be necessary from time to time to accommodate an unexpected growth.

Q. Then as I understand your answer, you believe that money should be taken from the annual earnings for the purpose of increasing the efficiency of the plant, as well as the business of the company.

A. No sir, that was not my statement.

Q. Well, now, what was your statement?

A. To state it in another way, a depreciation account should be such that this depreciation fund added to the then value of the plant should equal the first cost; in other words, you invest your money in the plant, and that investment should be maintained,

431 should be held level; the plant, on the other hand, is growing old, is wearing out, in spite of the fact that you are spending the money for what we call ordinary maintenance, you are keeping it working, but nevertheless it is wearing out, and the fund that is set aside as against that day when the plant must be replaced either because it is worn out or because there is some new device which if adopted will mean a cheaper service or a better service.

Q. The effect, then, of any new device that is adopted will be either to reduce the expenses, or to improve the service?

A. Yes, if we did not set aside a depreciation fund, and if the replacement of worn out plant or the adoption of improvements were made from a capital account, why your investment would grow and grow, and the cost of the service would increase and keep on increasing, because the capital invested must earn its return, its interest, and there would be no limit to the thing.

Q. Your answers apply mostly to the financial results, rather than to the engineering, is that correct?

A. I do not quite understand your question. It is an engineering fact that a plant wears out, and it is an engineering fact that the capital invested must be represented by some tangible property; it is the duty of the engineer to see that it is so, and that that property must be kept up to date, usable and serviceable; if the engineer does

not do that he does not do his duty; it is not a question of
432 finance at all.

Q. Which is the most expensive part of the telephone plant?

A. I really do not know what you mean; it depends on——

Q. I mean by that this; is the greatest expense in the switchboards or in the lines of wire—the greatest expense in first cost?

A. The greatest expense in first cost is generally in the line plant, pole lines and wire.

Q. That includes pole lines and wire?

A. Yes, and cables, if there are any.

Q. And ducts and conduits?

A. And ducts and conduits, if there are any; what we call the line plant.

Q. After the property known as the line plant wears out, is there any salvage or anything saved from what is taken out when it is reconstructed?

A. With iron wire there is no salvage; with copper wire there is a very considerable salvage; with the poles there is usually no salvage—poles and cross-arms.

Q. I see by this Report, Table No. 7, that the salvage of aerial copper wire is seventy per cent. Do you think that is a fair statement?

A. Yes sir.

Q. What is meant by the per cent. of reconstruction?

A. I might qualify that in a different way. The fund to be set as[illegible] that we have been talking about should provide for the replacement of a plant that is worn out, that is the item that
433 is called depreciation. It should also provide for the adoption of improvements of the art; that is reconstruction; that is, a plant which for any reason is replaced before it is worn out would be under the item called reconstruction.

Q. Therefore depreciation, then, consists not only of the gradual decay of the lines, but also of reconstruction which is necessary to keep the plant an up-to-date plant?

A. We have to so consider it.

Q. That is to say, if iron wire is replaced by copper wire, you would consider that expense a new construction, and properly chargeable to depreciation?

A. I would charge to depreciation that portion of the expense which would be represented by the iron wire; copper wire costs more than iron wire; we would not charge the entire amount to the depreciation account; it would be proper to charge a fraction of it to Capital and part of it to Depreciation.

Q. I notice from this statement that the life of an underground conduit main is 33 years; do you think that that is a fair estimate of the life of an underground conduit?

A. I do.

Q. Therefore, the per cent. of depreciation on an underground conduit would not be as great as on iron wire?

A. Not nearly so great.

Q. Or as the copper wire?

A. No, not so great as copper wire; there is scarcely any
434 difference, though, between copper wire and conduit, because conduit has no salvage value, and copper wire has very considerable salvage value.

Q. Seventy per cent.?

A. Yes, I don't remember the figures exactly, but about there.

Q. What is the life of a switchboard?

A. Judging from the past, about seven or eight years.

Q. Does that depend entirely upon the kind of switchboard or are all switchboards of the same kind?

A. No, switchboards differ very materially in kind, and it depends a little on the kind of switchboard, and it depends on the development of the art; it depends very largely on the character of the maintenance that a switchboard gets; with a highly organized maintenance force like we have in Chicago or New York, a switchboard can be kept up in better shape than in an outlying town, particularly an isolated town, of which I understand there are many in Louisiana, and the life of a switchboard would be considerably less in an outlying town than in a large town.

Q. What do you understand by switchboard?

A. It is the combination of apparatus at a central office by which it is possible to connect any line with any other line in the exchange, and enable the two subscribers to talk; the equipment is also arranged for signalling the subscribers and for signalling the office.

435 Q. Is that arrangement, together with the switchboard or any part thereof, the subject of inventions?

A. Yes.

Q. Now the switchboard that is in use in your exchange in Chicago, are those switchboards or their parts covered by inventions or patents?

A. Yes sir, some of the parts are, some of the features.

Q. Patents for inventions?

A. Yes sir.

Q. Now in case some new invention was to come out, tantamount to an improvement over the present character of switchboard, would you think it best to take that new invention and apply it to your exchange, and throw out the old switchboard?

A. It all depends on circumstances; if the improvement would result in a saving of expense to warrant throwing away a good switchboard of some existing type, we would do it, or if the improvement in service was sufficient to warrant that, we would do it; but inventions are frequently made that are too expensive to adopt.

Q. Who furnished this table No. 7, on page 70 of this Report?

A. I did.

Q. And it was on that table that you considered that 10.9 per cent should be set aside for depreciation, is that correct?

A. Yes sir.

436 Q. I notice on page 73 of this report, that the committee reported a depreciation of 8.3 per cent. In that you disagree from the committee?

A. I do.

Q. This table No. 7 on page 70 and table No. 8 on page 73 show your opinion of the report of that committee?

A. They do.

Q. In detail?

A. They do.

Q. It shows the per cent. of salvage in both the tables?

A. Yes sir.

Q. And it shows the annual contribution for reconstruction?

A. It does.

Q. And insurance?

A. It does.

Q. Now does your report involve the per cent. for insurance?

A. It does.

Q. That is included in column No. 5, Per cent. to Reconstruction?

A. Yes sir, the differences between the table which I submitted and the table which the committee has adopted are explained in part at least by the fact that they have said that many of the smaller items which I have included in my statement, they have eliminated because they are more properly chargeable to ordinary main-
437 tenance; that does not account for all of the differences, but that accounts for the major portions of the differences between my statement and the one that they adopted.

Q. As to the poles that form part of the plant of the Chicago Telephone Company, of what material are they made?

A. Michigan white cedar, almost all of them; and I will say, in passing, that the Michigan white cedar is the longest lived pole that is used in either telephone or telegraph business, except possibly the catalpa, and it has much longer life than the juniper or chestnut poles used in the South.

Q. What about cypress poles?

A. It is longer lived than the cypress pole.

Q. What, then, is the life of this white cedar pole?

A. They will run from 7 to 12 years, depending on the location and on the interference of traffic, and one thing and another.

Q. Have you had any experience with cypress poles?

A. I have not.

Q. You do not know how long they last?

A. Only as I have been informed; I have no experience whatever with them.

Q. Have you had any experience with creosoted pine poles?

A. None whatever.

Q. You don't know anything about their life?

A. Only as I have a general knowledge of their life.

Q. What is that general knowledge?

438 A. That we should expect perhaps 20 years and possibly longer.

Q. And you get that knowledge from general engineering observation?

A. Yes sir.

Q. The life of a creosoted pole may be longer than 20 years?

A. It may be; there is not the experience as yet to justify any close estimate as to the life; I will say, also, that they are expensive, and that is one reason why we have been deterred from using them.

Q. Isn't it a fact, Mr. Wray, that telephone exchanges are sometimes taken out, not because of the usefulness of the exchange, but because the numbers of the patrons had outgrown the use of the exchange?

A. That is true.

Q. In other words, where the exchange has a capacity for say 200 subscribers, and that limit is reached, new business is in sight, the company would take out that exchange and install a new one in place of it?

A. It would.

Q. And that would be included in the items of Depreciation?

A. Yes, the reconstruction; I might qualify my definition of Depreciation account by saying that it should include such a rearrangement of the plant as would accommodate an unexpected growth, whether outside or inside.

439 Q. And the money set aside for depreciation goes towards the paying for the rebuilding of that new exchange?

A. Yes, or re-arranging. Now that does not mean that the money is expended on the additional facilities or the additional plant.

Q. What becomes of that old exchange?

A. The usual procedure is to deduct the investment for the old exchange from the plant account, and that amount is charged off to the maintenance account, and the maintenance account is then credited with whatever can be obtained for the old switchboard, whether by sale to somebody else or whether by turning it over to the junk pile. And that would represent the salvage on the old switchboard.

Q. Suppose that switchboard was used by the company in opening up another exchange, what would be the result of such a condition?

A. That is sometimes done, where the type of board under consideration is not obsolete, and where it is in usable condition, it would be put through the shop and cleaned up and readjusted and the worn out parts replaced, and it would be given an appraised value by the engineers, and would be again charged back into the plant at that new appraised value. The practice differs somewhat with different companies; sometimes it is carried at full value until it is taken out of the plant altogether; sometimes part of the value is taken away when it is transferred from one office to another.

440 Q. How long has the switchboard in Chicago been there?

A. We have changed our switchboards three times in the last fifteen years that I have been with the company; that is we are now using the third type, the third new switchboard.

Q. Was that change caused by any recent growth of the company?

A. It was caused by the development of the art and by the wearing

out of the old equipment; both of those factors combined to make necessary the change.

Q. And also the growth of the business, at least the growth in the number of the subscribers, was the growth of the number of subscribers a cause?

A. That has not been a cause in the city of Chicago. In the city of Chicago we have a variety of different sized offices, and the investment is all charged to one account to the entire city; just now we have sixteen offices, with 18 switchboards, and we have a number of times taken a switchboard out of one office where it has been outgrown, and have moved it to another office in the city where it could go on giving service. The cost of that move would be charged to the reconstruction account, but the switchboard would go on. Then we have in a very few instances transferred boards from the city to an outlying office, but in spite of those changes or transfers of switchboards from one office to another, we are now operating on the third type of switchboard.

Q. This life of the copper wire that you put down here at
441 fifteen years, with a salvage of 70 per cent. how is that arrived at, by observation and experience?

A. By observation and experience in connection with the taking down of lines; the copper wire, except in certain very smoky localities, has a longer life than that.

Q. Than 15 years?

A. Oh yes, but the poles are renewed from under the wire; the pole rots out and is renewed under the wire.

Q. It depends, then, on the handling?

A. Yes sir.

Q. In other words, where the pole rots out, it requires the removal of the wire?

A. Not necessarily remove it, but you handle the wire in transferring it to another pole, and then again we frequently have to remove wire from the street, transfer poles and wire to the alley, and after the wire has been handled once or twice it is not fit to be used again; it is turned into the junk heap and made over.

Q. Then the life of fifteen years you have given here is dependent on the life of the pole?

A. Practically so.

Q. Otherwise the life of the copper wire itself would be much longer?

A. It would be longer than fifteen years, yes. Except in those localities where there is smoke, or along the seashore, I have had no experience myself, but I judge that in a salt atmosphere the
442 copper would not last as long as it would in weather conditions like we have in Chicago.

Q. In case of a break, is there any change to repair a copper wire, to repair that break?

A. Yes, certainly.

Q. In cases of that kind, the expense of the repairs goes to maintenance, does it not?

A. Yes, it goes to maintenance unless with the result of a severe storm, sleet storm or otherwise and the blowing down of a lot of wires; in that event it would go to the reconstruction account.

Redirect examination.

By Mr. GRANBERY, for the Plaintiff:

Q. Mr. Wray, did you examine a map of Louisiana, showing the location of the various exchanges and toll lines of the plaintiff company?

A. I did.

Q. You speak of the underground conduit life being 33 years; do you think it makes any difference whether it is placed in a mud-hole, or a firm soil?

A. It makes a great deal of difference, and it also depends on the character of the construction; the life of an underground conduit in firm dry soil will be considerably longer than marshy soil.

Q. Suppose these conduits are laid by opening a trench which is filled with a soft marshy soil, so much so that it is as thin
443 as ordinary mud, and laid in that kind of trench, would you say that the life would be 33 years?

A. No, I should say that it would not; one of the things necessary for an underground conduit is that it must be reasonably stable, it must be stable, if it is in a shifting soil it will break up, and a conduit with a broken joint is impossible, you cannot get your cables in or out, and it is absolutely useless.

Q. What has to be done in that kind of a case?

A. In that case the street will have to be opened up and new sections faced with brick will have to be laid; we have had some experience with what would be tantamount to that in Chicago, about fourteen years ago. A considerable amount of conduit was laid in the down town district without any concrete to support the conduit and in the joints, and the repairs to the street, steam rollers and one thing and another resulted in displacing the conduit and has practically made blocks of it useless, breaking it up, not only has it broken the tile itself, but it has broken the joints so that they did not meet, and it is impossible to get a cable through any particular length of conduit on Clark street, and it was repaired at an expense considerably greater than the first cost of the conduit.

Q. Mr. Wray, I will ask you to state whether or not this question of depreciation is universally recognized among telephone people?

A. It is.

Q. I will ask you to state if you know of a company in
444 America that thinks that less than 6 per cent. is reasonable amount for depreciation?

A. There is none that I know of.

Q. The amount of depreciation is dependent entirely upon the character of the country and the local conditions?

A. Not entirely; it is dependent on the character of the country and local conditions, and the character of the plant installed.

Q. And the development of the art?

A. And the development of the art, yes.

Q. You spoke a moment ago with respect to an old plant being replaced with a new plant; you don't mean to say that where a plant say of 200 subscribers, the capacity or limit of capacity is reached and new business in sight, that the entire plant is taken down?

A. You mean the plant, inside and outside, oh no. I mean only the switchboard, and that depends entirely upon the local conditions; the switchboard may be of such a type and so engineered that it can be added to without throwing out the existing board, or it may be necessary to throw it out. The rate of growth is a determining factor; often times we reach a point in our development where rather than add to an existing switchboard that we know must be taken out in two or three years providing the growth continues, we take the bull by the horns to-day and take it out so as to start anew on a larger basis. That is an every day occurrence with telephone engineers.

445 Q. Is there any better method known by which the business can be conducted?

A. None that I know of.

Q. Who is best able to determine the amount of depreciation necessary to set aside on a telephone property?

A. I should say the telephone engineers.

Q. I mean with respect to those who had the experience and lived with the property and watched it, or those who have lived in some other part of the country and have had experience elsewhere?

A. Most certainly those who have lived with the property, and have watched it.

Further this deponent saith not.

It is agreed that the stenographer may sign the witness's name to his deposition after being transcribed.

(Signed) J. G. WRAY,
By BUFORD DUKE,
[SEAL.] *Stenographer and Notary Public.*

446 GEORGE J. YUNDT, the next witness called, being duly sworn, deposes as follows:

Direct examination.

By MR. GRANBERY, for the Plaintiff:

Q. You are a citizen of Atlanta, Georgia, and the Chief Engineer of the Southern Bell Telephone Company, are you?

A. Yes sir.

Q. You came here upon Mr. Granbery's request, to testify here to-day in this case, did you?

A. I did.

Q. I will ask you to state what experience you have had in the telephone engineering business?

A. Well, I have been at it for eight years.

Q. Have you, this forenoon, examined a map of Louisiana, showing the locations of the various telephone exchanges and the toll lines of the plaintiff company?

A. I did.

Q. What territory does your company operate in, and has it operated in during the time you have been with it?

A. It covers exactly one-eleventh of the United States outside of Alaska, and takes in the major portion of West Virginia, and all of the following States: Virginia, North and South Carolina, Florida, Alabama and Georgia.

447 Q. Then you have a variety of soil and climate in the territory in which your company operates, have you?

A. Yes sir, very much diversified.

Q. I will ask you to state whether or not you have made a study of the question of depreciation of telephone properties generally, and especially with reference to the properties of the company you represent?

A. Yes sir, gone into it a number of times, ranging through all of the different essential parts of the plant; that is, to subdivide the plant into poles, cross-arms, iron line wire and copper line wire and insulated copper wire and switchboards and so on, all of the different essential parts of a plant.

Q. Mr. Yundt, are you familiar, in any degree, with the character of the soil and climate of the State of Louisiana?

A. In a way, I am familiar; I have gone through it twice; I have been in New Orleans, and from my observation of course I have looked at it when I was there, naturally observed it, and I will state it is very much like the section around Mobile and Pensacola, of which I have a very good knowledge.

Q. Mr. Yundt, I will ask you to state, what, in your opinion, is a fair amount to be set aside as a depreciation charge by the plaintiff company on its telephone properties, in the State of Louisiana, assuming that it has something like 60 exchanges located at the

448 pointed indicated on the map which you have seen, including the cities of New Orleans straight through to Shreveport, and following the lines of the railroad radiating from New Orleans?

A. Well, this morning I got the population of the points of every town that has an exchange, in Louisiana, its population the number of telephones, and the style of equipment, and the character of the poles, the character of wire, etc. and I believe that the amount of depreciation that should be allowed will exceed ten per cent. and probably come close to 12 per cent. Of course the only possible way to get that would be to take the valuation of each component of the plant, and then apply your depreciation rate to each item and then find the depreciation of the entire plant from those sums; but I think it would run from ten to twelve per cent., possibly twelve per cent.

Q. Will you exhibit to opposing counsel, if they desire to see it, the tabulated statement you have made of the location of the exchanges, the population of the towns and the number of subscribers, and the different classes of material?

A. Yes, but it would have to be gone into a little more completely to become part of the evidence; it would have to be gotten up in some way.

Q. Mr. Yundt, do you know any telephone property anywhere that does not take into consideration this question of depreciation?

A. I don't know of any company that is alive or is operating. We do have one company in our territory, which is owned by a son-in-law of a wealthy oil man, and he operates it without
449 any rhyme or reason; but all of the telephone companies that are of any consequence—and by that I mean all the Bell Telephone companies owned or controlled or in which the Bell Telephone Company is interested, and also all the large independent telephone companies, set aside a monthly depreciation.

Q. Do you know of any companies that are in existence to-day that show any life or vitality that charge less than six per cent. on the original cost per annum for depreciation?

A. No, I don't see how they can unless they have an enormous plant account, that is, capital account is excessive for subscribers' stations; for instance, well I would have to verify my figures, so I won't give that, but I do know some companies run as high as $300.00 for subscribers' stations in capital. This one I can give you, the plant at Mobile, Alabama, independent plant there, they are capitalized for nearly $300,000.00, and they have 500 working stations. They bought out the original plant for a large sum, and simply issued new stock to rebuild the plant. Now they have a tremendous capitalization and have only 500 stations, which amounts to about $600 of investment per station, and their rates are about $36.00 a year; that means that the interest alone will eat up the entire proposition.

Q. I will ask you to state who is in the best position to determine what depreciation is necessary and proper with respect to any given plant?

450 A. Well, there are two men in any company.

Q. What I mean is, with reference not to the character of the position they hold, but with respect to their knowledge of the property?

A. I should say the engineer was the best man.

Q. Would you say an engineer who had lived with the property, or built it or operated it or looked after it, was in a better position than an engineer who simply made an inspection of it?

A. Yes, most certainly, unless that engineer who inspected it had access to reliable records.

Q. The company that you represent, does it pay any dividends now?

A. It does now; I think it has for the last ... years.

Q. What per cent.?

A. It pays six per cent.

Q. And has for how long?

A. About two years.

Q. Prior to that time, what did you do with reference to dividends?

A. Nothing.

Q. I will ask you to state whether or not it accumulated a reserve for contingencies and deferred maintenance?

A. It acquired a little reserve last year, and then we had a large strike, and we had heavy storms on the Gulf coast during the summer, and in the winter, I don't mean this past winter, but the
451 winter of 1905-06, we had such tremendous sleet storms in the northern part of the territory that it wiped out everything. It cost us, I think, about $100,000.00, just because the poles and wires broke down in one case, and on the Gulf they were blown down mile after mile, cables and everything; we had to rebuild the entire town of Mobile and of Pensacola, and we had to practically rebuild smaller towns like Citronelle and other towns along the coast or a few miles from it; everything was blown over.

Q. How was it that your company was enabled to get money from year to year to prosecute its business and develop its properties, without the payment of dividends?

A. Well, that is a financial problem that I don't know much about; my opinion is that it was all furnished by the American Bell Telephone Company.

Q. Your property is not owned by the general public?

A. No sir.

Q. What is your capital stock to-day?

A. The company was reorganized about two years ago, with a capitalization of about $30,000,000.00, of which $15,000,000 was issued, that $15,000,000 represented the entire face amount of the notes and debts of the company that had accumulated.

Q. How long has that company been engaged in business?

A. I cannot say, but I presume, that is my recollection is it was some time previous to 1880; I believe it was one of the very first companies organized.

452 Q. And from the time of its organization down to two years ago, it didn't pay a dollar of return on the capital invested, is that correct?

A. My information is different from that, that is that up to two years ago they had not paid a dividend for nine or ten years, and that was due to this condition; the original builders of the company declared large dividends.

Q. What do you mean by large dividends?

A. Well, ten and twelve per cent., until instead of having some money set aside for reconstruction, and it was not long before the company was bankrupt, and about that time in a powerless condition, and there was then a reorganization of the executives, and about that time I came with the company, and since then every effort has been made to rebuild the plant instead of declaring any dividends or laying aside any money, it was all put into the plant, together with such money as could be borrowed.

Cross-examination:

Q. What position now do you hold with the Southern Bell Telephone Company?

A. Chief Engineer.

Q. You say that you have examined the plant of the Cumberland Telephone Company, in Louisiana, have you not?

A. No, I did not say that; I said that I looked over a map which shows the lines and the location of the offices.

Q. You haven't been over the plant in person?

453 A. No sir, I have passed through Shreveport, and been in New Orleans, and been around Slidell.

Q. Therefore, your testimony, in so far as the Cumberland Telephone Company, is mostly hearsay, isn't it, or information that you have derived through other sources and not your own?

A. My entire testimony is based upon my knowledge of Louisiana, and the assumption that it is similar to the region around Pensacola and Mobile, and upon the statistics of the company as to the stations and the population of the towns.

Q. Isn't it true that Mobile and Pensacola are situated on the Gulf of Mexico and Mobile Bay respectively, and that the salt air has some effect upon the wires of your company there?

A. Considerable effect—very marked effect.

Q. That would not apply to an interior town, would it, or a town say ten or fifteen miles distant from the seashore?

A. Yes, it would apply easily 15 or 20 miles; it would not apply 100 miles.

Q. How do you arrive at that conclusion?

A. By the fact that Savannah, Georgia is about 18 or 20 miles from the sea, and Wilmington, North Carolina, is possibly 15 miles from the sea.

Q. Are not the prevailing winds there from the sea?

A. Yes sir.

Q. Wouldn't that have some effect upon the salt atmosphere?

A. Some effect, yes.

454 Q. What census have you used in getting up the population of the several towns in Louisiana?

A. The towns that make the census of I will say 1900, and then let somebody make an approximation as to the present time and then allow for those people outside of the municipal limits, which are served by the telephone office of that town, that is the population may be only half of the town, of the people that are served by the exchange.

Q. Wherein does that matter of population affect the question of depreciation?

A. It affects it in a good many ways practically, and that is what I intended to give you. In the first place the towns are comparatively small; for instance, they run from 1200 to 5,000; 3,000, 1,000, 2500, 3,000, 4,000, 2500, and so on. Now small towns like that, isolated, means that you cannot take in enough money, there is not enough money there, in the telephone business, to have the highest grade of employees. That is condition one. You have to use such help as is available; you cannot get help such as — available in Chicago or New York, you have got to take the kind of men that you get at Sutcher or Clinton or Bayou Sara, or any place of that kind; that is the first condition. The second condition is, being small towns, the

only way in which you can build your plant is by means of open wire.

Q. You mean aerial wire?

A. Yes, aerial wire, because you are limited to two and three and four and a dozen telephones on a route; when you take a
455 town such as I have the population for, you will probably start off with three or four telephones to the hundred; in a few years you may run possibly to five telephones to the hundred; manifestly you cannot build that on a cable basis, you cannot get enough money, it simply is not available. Now that means that your plant is going to grow slowly, and you will add wire to wire; presently you will get to the point which is the limit of your pole line, then you have got to reconstruct the entire plant in order to get another subscriber on. Now that point may come after the life of the pole line and wires has been reached, that in that case you would put up a cable, but if that grows faster, in say 6 or 8 years, then you have got to write it all off and then increase it to 16 per cent. and no salvage. Those are two conditions. Now the next proposition is that because of this limited growth, the uncertainty in the direction of the growth, you are bound to have a large amount of wire, even if you do use cables, wires coming out beyond the ends of the cable which have been put up to relieve congested routes or replace them, the consequence of that is, that you have long open wire lines and numerous lines of that kind feeding to the central office through a cable, and you pick up lightning, and lightning storms are numerous. The result is, your cable is damaged, your boxes are destroyed, then you have to put a patch on your cable opened up, of course that patching is all in the matter of repair and nothing in the matter of depreciation, and after you have
456 patched your cable four or five or a dozen times, you have a bad tear here, and the consequence is your cable is all cut up and you have a number of bad repairs, and your cable has to be junked. If you put up an all cable plant and feed the wire off to the houses, you would be immune to a large degree from these troubles. Again, because of the open wire we suffer from strong current troubles, electric light crossings, railway currents, or whatever power circuits there may be contiguous to it. Again because of the need for open wires, two and three arms, four arms, you are subject to all kinds of storms, your pole lines are blown over. I think those are the principal points.

Q. Then it is from a consideration of these matters that you arrive at the conclusion that the depreciation should be between ten and twelve per cent. of the original cost of construction, is that it?

A. Not altogether that, because, I will state why.

Q. State any additional reasons?

A. I will state why I arrive at 12 per cent. That is by my knowledge of the average elements, or average values of the elements that go into the plant. For instance, we know that the iron wire will last us but five years; we know that cable will last us but ten or

eleven years, under the best conditions, but allow it to feed into open wire routes, and it brings its life down to 7 or 8 years. I have had cables replaced in five years. And I know the character of the poles that you use in that State, I know that they are cypress, I
457 know that they are juniper, I know that they are heart pine, and our poles, we get the poles from your State, from Mississippi and Louisiana, and I know their life is only from 5 to 8 years, so the depreciation on the poles is from 12 to 20 per cent. I know what the depreciation on the switchboards are because we use practically the same type; I know what the depreciation on the instruments is, because we use exactly the same kind of instruments.

Q. What is the depreciation on the instruments?

A. I put the depreciation on the instruments about 15%.

Q. Who furnishes the instruments?

A. Oh, I see, you are distinguishing between hand telephone and transmitter and the subscribers' sets; I will change my expression to subscribers' sets, in place of instruments.

Q. What do you mean by subscribers' sets?

A. Subscribers' sets are those portions of the plant located at the subscribers' stations, and they comprise the coil, that is, the induction coil, the condensers, a hand generator and cord and battery box and batteries and things of that sort; they comprise everything except the transmitter and receiver.

Q. Now if I can understand from your testimony, you consider the depreciation is greater in rural and outlying districts than it is in large cities?

A. Yes sir.

Q. And because you judge that there are many stations in
458 Louisiana that are situated in outlying or small towns, that that makes the depreciation so much greater?

A. Yes, it has a hazarding effect on it, it is one of the things that results.

Q. Would you consider the depreciation, for instance, in the city of New Orleans, or in the city of Shreveport, as great as the depreciation in these small towns proportionatel-?

A. The depreciation in New Orleans might be as great, but I do not believe that it is, for the reason that your telephone company owns its own building, built purposely for telephone work, and is not compelled to move its switchboard, remains where it is; and it has underground conduit, and underground cables, and it has aerial cables, which feed a good many stations directly from the cable to the house; and a good many telephones are fed directly from underground into the office building, and there is practically no effect of the elements to come into that to bring in their work.

459 *Q.* A cable passing through a conduit has a longer life than a cable that is exposed to the elements?

A. A cable in any conduit has a longer life than one suspended in the air, not because the air gets at it, but because of the methods available for suspending the cable.

Q. Not because of the elements, but because of the methods available for suspending the cable?

A. Yes sir.

Q. Do you mean by that the poles?

A. Yes, the poles and strands.

Q. This company has a great many creosoted poles, I believe it has been testified to, particularly in the large cities. Do you know the life of those creosoted poles?

A. I do not. We have a great many thousand in use and I know that many of them have been standing for at least ten years and are apparently good. My information is to the effect that they will last twenty years and possibly twenty-five years, depending upon the load put upon them, and that information, I believe, was gathered from the German Government, which has been studying this matter of creosoted poles for a great many years, but that needs to be regarded with caution, for the reason that the character of timber creosoted has some effect upon the strength and therefore, the life of the pole. But, I believe fifteen or twenty years is a safe estimate.

Q. Do you know of any place in Louisiana where the
460 company employes local men as managers?

A. I do not. I do not know anything about their operating methods.

Q. Are not the managers, as a rule, men who have been engaged for years in the telephone business?

A. I don't know anything about this company's managers.

Q. But, you testified that because of the small population of these outlying towns and rural districts, it would be necessary to get managers and operators from these towns themselves, but they were not, as a rule proficient telephone men, and you gave that as one of your reasons why the depreciation should be between ten and twelve per cent.?

A. I would like to correct you on that, if you please. I stated that the maintenace would necessarily be higher, because the men who were to maintain the plant were such employés as would be secured from the size towns I have described, and my knowledge of a hundred different towns of the same population and ranging from Virginia to Key West, Florida, and the State line, is, that such men are not such *as* men that could be expected to be found in Chicago and New York, therefore, the quality of maintenance done by thos- men can not be as good as one would like to get.

Q. And yet, you don't know from what sources or what sections of the state these men come from?

A. I don't know where their managers come from.

Q. Do you know where the men that maintain the plants come from?

461 A. My assumption was that they came from the local towns, where the plants were located.

Q. It has been testified here that the company employed the best class of men, and your answer is upon the assumption that they do not employ the best kind of talent in those localities?

A. No, I beg your pardon, my assumption is that they get the best

men that such a town will afford, but that it does not employ the best men obtainable in the world, we will say, for instance, for such a town is Slydale. That would be unnatural and would be impracticable and would not be a commercial proposition. It is a business arrangement, to get the best help you can in a community.

Redirect examination.

By Mr. GRANBERY, for Plaintiff:

Q. Regardless of where the help comes from, would the prices of wages and the conditions surrounding the employment justify the employment of skilled labor in those places, such as you would expect to find in a City like Chicago, Memphis, New Orleans or Nashville, and cities of that size?

A. No, it would not. It is better to allow a little higher rate of depreciation than to pay $25 or $50 a month more in a
462 town say like Slydale, it would eat you up. You have to balance cost against revenue and that is all there is of it and against it you have to balance annual charges on a certain kind of plant against one another and against revenue.

Q. I will ask you to state whether or not you are familiar with the character of soil underlying the City of New Orleans?

A. I spent several days in New Orleans and went around in an Automobile last February and my impression was that it was a heavy and wet soil and the drainage was very bad.

Q. I will ask you to state whether or not conduits laid in such soil are of as long life as conduits laid in dry, firm soil?

A. I believe that they are.

Q. Would you say that they would have to be reinforced with concrete for support?

A. Yes, which makes the construction more expensive.

Q. If they are properly constructed?

A. Yes, the expense increased. The poorer the foundation, the more *in*expensive is the first cost of construction.

Q. Why is it that these conduits have to be built in such a way as to keep them in perfect alignment?

A. If you did not provide a good, solid bed for your conduits to lie on, the gas man and the water man and the electric
463 light man, or the men putting in a sewer, would undermin*d* you or dip up on top of you and your conduit falls apart and you spend possibly a dollar a foot for each run, and you would have five hundred dollars tied up and would not be able to get your cables through, you would have to dig up the street, pay another bill for paving and straighten it all out new unless you build it right when it protects each cable and avoids trouble in the future.

Q. Please state whether or not the sulphur from bituminous coal, in large cities, has an effect upon the open work and wires of a company in that city?

A. It has a very decided effect. For instance, in Birmingham, it has coke ovens, furnaces and manufacturing enterprises and iron wire at some places, it will not last us six months in certain localities.

Further this deponent saith not.

By agreement of counsel for both sides, the signature of this witness in his deposition is waived, it being agreed that the Stenographer and Notary Public may sign the name of the witness hereto in his stead.

(Signed) GEORGE J. YUNDT,
(Signed) By BUFORD DUKE,
Stenographer and Notary Public.

464 On Wednesday morning, before the first deposition in this case was taken, it was expressly agreed between counsel that all exceptions to each and every question asked in every deposition of every witness to be examined were expressly reserved to the hearing. This agreement was made for the purpose of saving time, and to prevent the interruption of the witness in noting exceptions, and it was expressly agreed by counsel representing the plaintiff company that the defendant should reserve to the hearing every exception for competency and relevancy of every witness examined.

(Sig.) BUFORD DUKE,
Stenographer and Notary Public.

465 *Letter of Duke & Beall and Exhibits* 7, 8, 9, 10, 11, and 12.

Filed August 14, 1907.

No. 13473.

United States Circuit Court, Eastern District of Louisiana.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Duke & Beall, Court Reporters.

Telephone Main 456.
27 Noel Block, Nashville, Tenn.
Residence Telephones.
Buford Duke, Hemlock 121.
W. Otho Beall Main 580.

AUGUST 12, 1907.

Clerk U. S. Circuit Court, New Orleans, La.

DEAR SIR: Enclosed please find Exhibits Nos. 7, 8, 9, 10, 11 and 12 to the Deposition of H. Blair Smith, sent you by express a few days since, in the case of The Cumberland Telephone & Telegraph Company *vs.* Railroad Commission of the State of Louisiana, which please attach to the depositions, and oblige,

Yours very truly,
(Signed) BUFORD DUKE,
Commissioner.

466 CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION STATE OF LOUISIANA.

Exhibits to Deposition of H. Blair Smith.

EXHIBIT #7.

Construction Classified by States.

	June 30th, 1906.	December 31st, 1906.	June 30th, 1907.
Illinois	$171,362.32	$176,596.11	$174,595.56
Indiana	1,562,235.55	1,608,857.28	1,655,485.07
Kentucky	5,508,136.51	5,665,734.99	5,770,079.36
Tennessee	6,433,954.62	6,760,420.36	7,023,459.80
Louisiana	4,722,435.74	5,185,368.28	5,394,145.43
Mississippi	2,742,907.87	3,290,801.09	3,358,993.24
Estimates under way	58,424.23	37,003.13	133,581.09
	$21,199,456.84	$22,724,781.24	$23,510,339.55

467 EXHIBIT #8.

Louisiana Property purchased of Great Southern Telephone & Telegraph Company	$765,951.42

468 EXHIBIT #9.

Construction in Louisiana in Yearly Periods to June 30th, 1907.

June 30th, 1898	$937,583.00
June 30th, 1899	1,508,535.44
June 30th, 1900	1,996,614.90
June 30th, 1901	2,321,083.63
June 30th, 1902	2,641,550.12
June 30th, 1903	2,986,523.86
June 30th, 1904	3,369,661.57
June 30th, 1905	3,801,699.87
June 30th, 1906	4,722,435.74
June 30th, 1907	5,394,145.43

469 EXHIBIT #10.

Exchanges in Louisiana Purchased of Great Southern Telephone & Telegraph Company.

	Cost.	Construction added.	Total June 30, 1907.
Baton Rouge	$7,210.37	$110,042.42	$117,252.79
Bayou Sara	2,179.88	11,742.11	13,921.99
Donaldsonville	4,092.08	40,514.41	44,706.49
Franklin	4,862.81	35,796.15	40,658.96
Lake Charles	25,152.45	71,994.81	97,147.26
Monroe	14,420.74	55,749.98	70,170.72
New Iberia	23,810.99	52,531.15	76,342.14
New Orleans	592,927.83	2,248,463.43	2,841,391.26
Plaquemine	503.05	25,247.58	25,750.63
Shreveport	24,481.72	250,525.56	275,007.28
	$699,741.92	$2,902,607.60	$3,602,349.52

470 EXHIBIT #11.

Exchanges Built or Bought After Purchase of Great Southern Telephone & Telegraph Company, Showing Purchase Price and Investment to June 30th, 1907.

Exchange.	Date opened.	Amount invested June 30th, 1907.	Purchase price.
Abbeville	May, 1900	$16,366.25	
Alexandria	January, 1901	39,790.08	$5,000.00
Amite City	June, 1899	13,117.22	
Arcadia	June, 1901	12,635.89	
Bastrop	October, 1905	2,710 95	885.90
Berwick	July, 1904	5,621.22	
Boyce	January, 1906	3,655.06	3,000.00
Bunkie	January, 1906	7,162.16	
Cheneyville	December, 1901	5,527.05	
Clinton	July, 1900	7,397.76	
Colfax	January, 1906	2,220.18	1,500.00
Coushatta	December, 1900	9,038.37	
Covington	April, 1900	34,305.73	
Crowley	November, 1900	50,164.12	2,500.00
Delhi	December, 1905	5,813.11	
Gueydan	January, 1901	7,464.69	1,500.00
Hammond	December, 1898	17,972.24	
Homer	October, 1900	13,782.73	
Houma	April, 1899	25,201.35	
Jackson	September, 1900	7,458.18	
Jeanerette	November, 1899	12,631.15	
Jennings	July, 1901	44,836.02	1,500.00
Kentwood	March, 1901	6,191.69	
Lafayette	August, 1899	41,215.99	
Lake Providence	1901	11,806.88	
Lutcher	May,	14,130.29	
Mandeville	April, 1900	9,718.50	
Marksville	August, 1901	3,406.76	
Melville	January, 1906	5,051.43	
Minden	March, 1906	20,868.85	
Morgan City	July, 1899	19,643.78	
Napoleonville	April, 1899	8,499.53	
Natchitoches	January, 1900	27,092.70	
Opelousas	February, 1901 (x)	18,075.99	
Patterson	March, 1902	11,269.19	
Ponchatoula	October, 1899	5,005.90	
Rayne	March, 1907	8,046.36	
Rayville	March, 1904	6,685.29	350.00
Ruston	June, 1904	24,313.25	
Slidell	March, 1900	8,177.87	
St. Joseph	May, 1905	11,679.65	
St. Martinsville	October, 1901	8,159.15	
Tallulah	September, 1901	6,035.37	
Thibodaux	August, 1903	38,412.01	
Vidalia	February, 1899	11,857.60	
Vinton	December, 1898	2,101.30	
Waterproof	June, 1904	3,268.53	
Welch	June, 1902	12,114.70	
White Castle	April, 1902	8,790.35	
Wilson	February, 1900	7,370.70	
Sub-licensees and miscellaneous	May, 1900	11,128.89	
		$714,990.01	

(x) Again in January, 1906.

471 EXHIBIT #12.

Toll lines purchased from Great Southern Telephone & Telegraph Company	$66,209.5
Construction added to June 30th, 1907	1,010,596.4
	$1,076,805.9

472 *Testimony of Plaintiff in Rebuttal.*

Filed August 19, 1907.

In the Circuit Court of the United States for the Eastern District of Louisiana.

Nos. 61 and 66, Consolidated.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
RAILROAD COMMISSION OF LOUISIANA.

Testimony taken and evidence offered on behalf of complainant in rebuttal, in the above numbered and entitled cause, on Saturday, August 16th, 1907, before E. M. Fuller, Esq., examiner, as per order of court of date July 30th, 1907, at New Orleans, La.

Appearances.

W. L. Granbery, Esq., for Complainant;
Walter Guion, Attorney General, and E. Howard M'Caleb, Jr., for Defendants.

Witness:

E. L. Powell..... Page 2.

(Rep't by D. Wendling, St'n.)

473 E. L. POWELL, produced by the plaintiff in rebuttal, being heretofore sworn, testified as follows:

Direct examination.

By Mr. GRANBERY:

Q. Mr. Powell, you are the division superintendent of the plaintiff company in Louisiana and Southern Mississippi, are you not?

A. I am.

Q. Please state whether or not the plaintiff company owns the whole route shown on the map filed as an exhibit to the testimony of Mr. Barrow, and marked A. T. & T. Co. from New Orleans to Pearl River?

A. The line is the property of this company from New Orleans to the Rigolets, that is, to the Orleans parish line. An examination of the map will show that the marks A. T. & T. Co. are shown on Pearl River and are undoubtedly intended to apply to that portion of the line, only.

Q. Which is how many miles?

A. From New Orleans to the Rigolets is, approximately, thirty miles.

Q. How much of the line does the A. T. & T. Co. own in Louisiana?

A. It is a little less than six miles; I do not remember the exact distance. It is just that distance from the Orleans Parish line to Mississippi state line, parallel with the L. & N. Railroad.

Q. There is a toll route marked Postal Telegraph Co., on that map. To whom does that toll route belong?

A. That line extends from Avondale to the Texas line, and is the joint property of the two companies, that is, the Cumberland Telephone Co. and the Postal Co.

Q. Do they operate the same wires, or do they own the whole route jointly, or each put up and maintain separate wires?

A. The whole route is owned jointly; each company operates and maintains its own wires.

474 Q. I will ask you to state whether or not you are furnished with tariffs of toll rates promulgated by the North Louisiana Telephone Co., under order of the Commission of July this year?

A. I am.

Q. State on what mileage basis that tariff is based?

A. An average basis of three-fifths of a cent per mile.

Q. What basis is the plaintiff company's tariff based on, that is the rate now in force and not those insisted upon by the Commission?

A. Below one hundred miles, the mileage is slightly in excess of one-half a cent for some of the rates; beyond one hundred miles it is one-half a cent per mile. I would like to refer to the order No. 448. The said basis is shown in order No. 488 of the Railroad Commission of Louisiana, attached to the deposition of Mr. Barrow's.

Q. Now, please state, Mr. Powell, whether or not the change in the schedule made in December, 1905, resulted in an increase of revenue to the Co., and explain why the change was asked and allowed?

A. The change to the square system did not result to increase the revenues. There were a number of changes in the rates, some being increases and some being decreases. Owing to the change in the system of measuring and computing the change was asked as a matter of convenience to the Cumberland Telephone Co., and the general public, so as to lessen the labor in making up the tariffs. Under the square system, when the rates from square to square have been filed with the Commission, it is only necessary in sending out new rate sheets, to place thereon such special rates as may apply to stations inside of the square, the other rates having already been fixed.

Q. When that order was asked, was any explanation made to the Commission in regard to an increase or decrease of revenues, if so state what that was and how it was done?

A. The matter was gone into very fully by the Commis-

475 sion and received consideration at different times and periods. We made up and furnished a list of tolls showing the rates in existence and the new rates that would be affected under the square system, and the amount of decrease or increase that might take place, so that the commission could determine just what the changes would amount to.

Q. I will ask you to state whether or not the purpose of that change was to increase the revenue, or to facilitate the handling of the tariff sheets?

A. The company felt there would be a slight decrease in the revenue, but that decrease or loss in revenue would be more than off set by the increased facilities afforded for handling the business.

Q. Has the experience of the company justified that opinion?

A. Yes sir.

Q. Has the North Louisiana Telephone Co., a schedule of rates in which any reduction is made for night or Sunday service?

A. No, they charge the same rates for nights and Sundays that they charge for day service.

Q. Mr. Powell, is there competition between water and rail transportation from any point in Louisiana on material used for telephone Companies?

A. Actual water competition exists in a very few places where we do any considerable business. There is water competition along the Mississippi River, and at times along the Red River, but we have not found it to our advantage to make the shipments by boat. As far as I know, there are no boats running between New Orleans and Lake Charles, or between New Orleans and Morgan City *of* between New Orleans and Natchitoches, or Thibodaux, or Houma, or Napoleonville.

Q. Please explain *explain* what is required of the company by the Railroad Commission in the shipment of poles and other material which requires less than a car load lot?

A. When the company ships a pole for repair purposes, we find it necessary to pay freight on a full car load at minimum
476 car load weights at car load rates, or in the alternative we are required to pay for 5000 pounds of freight at the first class rate.

Q. Mr. Powell you have charge of all shipments of freight in Louisiana?

A. Yes, sir.

Q. Do you ship them at best you can——

A. Yes sir.

Q. — in the most accessible way?

A. Always.

Cross-examination.

By Judge GUION:

Q. Mr. Powell, as I understand you, your reason for shipping poles by cars is because there is no water competition between New Orleans and those points mentioned?

A. None available for our purpose.

Q. What do you call available?

A. For instance, if a boat leaves *a*ccasionally, that would not help us.

Q. What do you call occasionally?

A. Once a week wouldn't help us, for instance, if a line was down,

we can't wait; we got to ship it in the quickest possible way, the poles.

Q. You get any—do you ship any poles oftener than once a week?

A. No, but very frequently we get an order for poles in the morning and we have to ship it the same day.

Q. Do you always get transportation by rail when you call for it, to meet all these exigencies as they arise?

A. Always, no.

Q. Is it not a fact that you don't get transportation frequently when you need it, by rail.

A. We don't have very much trouble in that respect.

Q. Hav-n't you had trouble?

A. At times we had slight trouble.

Q. Don't you know as a fact there is water communication between New Orleans and Houma?

A. I do not.

477 Q. Don't you know there is a boat that runs regularly once a week between New Orleans and Houma?

A. No, sir, I am not aware of that.

Q. Well, it is a fact?

A. I don't dispute the statement if you say it is a fact.

Q. There is a boat running to Barataria, and the Barataria Canal crosses Bayou Lafourche does it not?

A. I think it does; I don't know whether that boat is of a size that is available, that is available for our purpose.

Q. You don't know anything about it?

A. No sir, I do not.

Q. Don't Bayou Lafourche connect with New Orleans on points on the Bayou from Donaldsonville to ——?

A. When it is navigable; I do not understand that it is navigable at present.

Q. Don't you know the boats running to Donaldsonville connect by the Barataria Canal?

A. No, sir.

Q. When you say there is no water competition you mentioned what other points?

A. I said Natchitoches and Morgan City and Lake Charles.

Q. Don't you know there is regular water transportation between New Orleans and Morgan City by boat?

A. I do not.

Q. Is it not a fact that the Atchafalaya runs out of the Mississippi and down to the Gulf of Mexico at Morgan City?

A. Yes, sir.

Q. And that the Atchafalaya runs out of the Mississippi river?

A. Yes sir.

Q. Is not the Atchafalaya a large navagable stream all the way to the Gulf?

A. Yes sir, but on account of the trip, it would not be available.

Q. Is there not a large quantity of valuable stuff in that immediate section of Morgan City, timber that could be used for cypress poles in that immediate neighborhood?

478 A. There are cypress mills all around, but the timber is not available at present prices, that is the price of cypress timber is such that we are practically out of the market.

Q. Can't you buy poles in the swamp country in and around Morgan City that would be available for the purpose of stringing wires?

A. No sir, round cypress poles, have an average life of three and one-half years.

Q. What kind of poles have you at Bayou Lafourche?

A. Some cypress and some cedar.

Q. How long have they been there?

A. It is my impression that the round cypress poles are in use only below Lockport; that between Lockport and Lafourche crossing, heart cypress poles are used usually, and from Lafourche crossing to Thibodeaux, red cedar. The round cypress in use from Lockport to Cut Off, have been there not exceeding five years, or about five years.

Q. They are still in existence?

A. Yes sir, but they have been condemned and will have to be replaced at an early date.

Q. When were they condemned?

A. By the affiant, and they have to be replaced.

Q. Is it not an actual fact that when you constructed your telephone line along Bayou Lafourche, that you put up your entire line with round cypress poles?

A. I think that is a fact. My recollection is that we bought some heart cypress poles for a considerable portion of the line. As a matter of fact, for repair purposes, we can't rely on the boats at all for any shipments needed for repairs.

Q. Is it not because of the fact that all your poles follow the railroads' right of way?

A. No sir, they do not all follow the railroad right of way; a majority of them do.

479 Mr. M'CALEB:

Q. Don't you know that rates are affected by water ways, whether there is boats operated or not?

A. I was not under the impression that they were affected, unless the boats actually operated; I never examined the tariffs to see.

Q. Don't you know the Commission makes an exception in rates of tariff in all water competition points?

A. I know they do in all points where there is actual water competition; I never knew that points where no boats ran were regarded as competitive points.

Q. Don't you know the rates to Lake Charles are lower than all intermediate branches?

A. I do.

Q. Don't you know that about Morgan City?

A. I do not.

Q. And about Natchitoches?

A. I do not.

A. Have you ever made an examination to find out?

A. No sir, I have not. It is a fact that if the shipment were made, or could be made absolutely without any cost, from New Orleans to Lake Charles, by boat, at the time on repair shipments, it would be prohibitive.

Q. That is not the question. The question is whether the rate is lower where the boats operate or not?

A. I said I did not know that. I have not examined the tariffs and have no knowledge on the subject.

Q. Don't you know that the rates to all points to the west side of the Mississippi River and on all points on the east side, from the State Line to Bayou Sara, are affected by the water competition of the Mississippi river?

A. I have not made any examination of tariffs to see, but I do not doubt at all that that is the case.

Q. Mr. Powell, under the rates established by order 488, where rates do not end in zero or ought or five, don't you carry to the next higher figure? In other words if a rate, for instance, is
480 41 cents, don't you say 45 cents or charge 45 cents?

A. Yes, sir.

Q. Therefore, that would be a higher rate than one-half a cent a mile over one hundred miles?

A. A slightly higher rate.

Q. Is it not a fact that the gross revenues, as a whole, have steadily increased, since the adoption of order 488?

A. I think so; the company's business has increased, but we have been building lines and opening up new exchanges.

Q. Is it not true that the net revenue has steadily increased?

A. I do not think that is true; my view is not in accordance with that. I have not the figures with me to enable me to say.

Q. Is not that shown by the annual report made by the Company to the Railroad Commission?

A. Doubtless, yes sir.

Q. What is the average weight of a telephone pole—of a creosoted telephone pole?

A. The poles used by us range from five inches in diameter at the small end and twenty feet in length in lengths for light lines, up to 100 feet in length, and 10 inches in diameter at the small end, for poles requiring high cross arms. The average size of poles required for toll construction, may be considered as from 25 to 55 feet in length, 7 inches in diameter at the small end, and these poles will weigh from 250 to 800 pounds each.

Q. Has your company ever shipped one telephone pole at a time on a car?

A. Several hundred times, yes sir.

Q. What character of poles?

A. Twenty-five and thirty foot poles, for repairing toll lines.

Q. Wouldn't it be an economy to ship as many poles as the car would accommodate?

A. It would not, if you do not need but one pole.

481 Q. Doesn't the company concentrate these poles at certain points which are then taken when needed for repair purposes?

A. Yes as far as practicable. For instance, we carry a small stock of poles at nearly every exchange for repair purposes.

Q. Mr. Powell, in your direct examination, given at Nashville, you stated that the exchange, for instance, at Baton Rouge, was entirely rebuilt in 1906 and part of 1907. What was the reason for that change?

A. There was several reasons. One was that the wire needed renewing, that a great many poles needed renewing, the cross arms had practically lived their entire life, and in the evolution of the business the system had changed and necessitated a change from the old ground rim system to metallic rim system, and as the apparatus was antiquated and out of date for the town of the importance of Baton Rouge, the company considered it advisable to install new equipment.

Q. Is it not a fact that the business of the company had outgrown the capacity of you switch board at Baton Rouge?

A. No, the switch-board at Baton Rouge at present is equipped for 800 lines, and is of a capacity that can be increased to 800 lines.

Q. I am not speaking of the present switch-board, but I am speaking of the old switch-board?

A. I am speaking of the old switch-board; the new switch board has not been connected up yet.

Q. I am speaking of the board used when you bought from the Great Southern, you took out a switch board didn't you?

A. We took out a switch board in 1898 and installed the new switchboard; they are now taking out a switch-board put in in 1898, and putting in a new one.

Q. Why are you taking out the second switch board?

A. Because we are changing from one system to another,
482 and we thought the importance of Baton Rouge is sufficient to justify the change.

Q. Is it not a fact that the old switchboard didn't have the capacity to handle the business at Baton Rouge and that was the reason you installed the new switchboard?

A. No sir, if you will permit me to explain, I will do so. The switch board at Baton Rouge now being replaced, is what you call a multiple type and can be increased by adding sections from time to time, as may be necessary, to a total of 1600 lines, just twice the capacity of the present equipment.

Q. Isn't that change necessitated by reason of the growth of the business?

A. No sir, for instance we have exactly the same type of board at Shreveport that we increased to 20000 lines.

Q. How many subscribers could you accommodate under the old exchange?

A. What do you mean by the old exchange?

Q. The Exchange you purchased from the Great Southern?

A. The switchboard?
Q. Yes?
A. The switch-board at that time——
Q. I am not speaking of the switchboard, I mean the exchange itself; how many subscribers could you handle?
A. How many was the exchange fitted up to handle?
Q. Yes?
A. My recollection is that the switch-board was equipped for 200 lines, and that the cable capacity was for about 400 lines, 400 subscribers.
Q. Now, what is the present number of subscribers for that exchange?
A. 894.
Q. Then the switchboard, or the new exchange that was installed, accommodates more than the old exchange originally purchased from the Great Southern Telephone Co.?
483 A. Oh yes sir, but the capacity of the exchange has been increased year by year, as the necessity therefor arose. That is necessary in all exchanges.
Q. I notice from your statement that in Arcadia, La., you still have the same switchboard and telephone that you had placed there in May 1901, is that correct?
A. Yes, sir.
Q. What is the condition of those switch boards and telephone apparatus?
A. Reasonably good condition.
Q. Now, at Colfax, Louisiana, that exchange was purchased on the 1st of January, 1906, and you state it will have to be entirely rebuilt this year; what is the reason for the rebuilding of that exchange?
A. Principally decay in the poles and cross arms and wires.
Q. Therefore, when you purchased that exchange, it was not in first class condition?
A. No, it was built by the Colfax Telephone Company, and they used native poles principally—by native poles I mean as good poles as they could get along in that section.
Q. And you are putting in creosoted poles?
A. I expect to.
Q. At Coushatta, that exchange was built and opened for service in November, 1900?
A. I think that is about the time.
Q. Is the switchboard and telephone still in use in that exchange?
A. Yes, sir.
Q. What is the condition of that switchboard?
A. In a reasonably good condition.
Q. Would you say about how long that switch board will last?
A. It should last five years; it could be of good service for five years longer.
Q. Now, at Franklin, La., in which plans are being prepared by your engineer department, is that switch board or telephone in use at present?

484 A. The second switch board is now in use at Franklin, and the new switchboard was installed about eight months ago. The same instruments are in use, the instruments installed when we first equipped the plant, and a new board was installed about eight months ago.

Q. What is the condition of the switchboard and the telephones and the exchanges at Gueydan; you stated here, in your testimony, (referring to testimony taken at Nashville) that it will have to be entirely rebuilt within the next two years. What is the condition of that switch board and telephone?

A. The switchboard is of a type that is considered obsolete entirely. It is in fairly good condition, but when we rebuild, we expect to instal a more modern type.

Q. You expect to do that within the next two years?

A. Yes, sir.

Q. At Hammond, La., what is the condition of that switchboard and the instruments there?

A. They are in very good condition.

Q. About how much longer will they last?

A. We ought to get a total average life out of switch-boards and instruments of ten or twelve years; I do not remember the date they were put in; we get that average life.

Q. You know the condition of the switch board and instruments at the present time?

A. I am reasonably familiar with it.

Q. How much longer would that switchboard last, giving due consideration to repairs and maintenance?

A. I think we ought to get six or seven years life out of it longer.

Q. What is the condition of the switchboard put in by the company in 1899 at Houma, La.?

A. The new equipment has already been ordered for Houma, and that is to be replaced within the next two or three or four months.

Q. Is it because the switch board is obsolete or because its condition is such that it can't be used any longer?

485 A. The condition of the switch board requires the change; it is an obsolete type. But the switch board is worn to such an extent that it is necessary to replace it, and while doing the work we will replace it with a different type of equipment.

Q. You expect to put in a better type of switch?

A. Yes sir, not a better type, but a type more suited to a town the size of Houma. The exchange at Houma began with 38 telephones, but as the business has increased we preferred to put in a type that is more convenient for operators.

Q. What is the condition of the switch board and instruments at Kentwood, La.?

A. The switchboard and instruments are in fair condition. The switchboard will be replaced this year. This change at Kentwood is made necessary by the fact that we are moving to our new offices and it is not practicable to move the present equipment.

Q. But if you were not to move to new offices, how long would that switch board be used?

A. Certainly not longer than three years, if that long.

Q. At Lafayette, La., what is the condition of the switch board and instruments there?

A. Both first class.

Q. How long will the switch board and instruments last?

A. We ought to get 12 years life out of them.

Q. That is equipment put in in 1899 is it not?

A. No sir, it has been changed within the past 18 months.

Q. At Lake Providence, what is the condition of the switchboard and instruments there?

A. Fairly good condition.

Q. How long will the switch board last about?

A. We should get six or seven years additional life out of that equipment.

Q. Now, at Lutcher what is the condition of the switchboard there?

A. They are very good.

Q. How much longer life can you get out of them?

486 A. On the type of board in use at Lutcher, I should say about four or five years longer. It is a different type of board then the board in use at Lake Providence.

Q. At Mandeville, what is the condition of the switch board there?

A. Good.

Q. And the instruments also?

A. Pretty good.

Q. About how much longer service will you get out of them?

A. I should say seven or eight years.

Q. Now, Marksville, La. What is the condition of the switchboard and instruments there?

A. That, eventually the company will change the switch board within the next year. The orders have been already issued for the making up of plans for this, and the instruments will continue in service to the extent of about 50 per cent.

Q. What is the reason for that change?

A. The switchboard has deteriorated; it is practically worn out; it has not received as good a treatment as it should have received from the employees.

Q. At Minden, La., what is the condition of the switchboard there?

A. Practically new.

Q. At Monroe, La.?

A. The instruments are in good condition; the switch board is of the standard type, and has been installed at several different periods; that is, it has been increased from time to time. I should say it has been installed an average of about three years, and we should get an average of nine -ears additional life out of it.

Q. Those increases, is that due to the growth of the business?

A. Yes sir, by reason of the growth of the business at Monroe. Let me explain that. A switchboard is increased subsequently as you need to increase it, by adding additional runs as you need them.

The boards are built in sections, so that you install just such as may be needed from time to time.

487 Q. At Napoleonville?

A. The switchboard there is in reasonably good condition.

Q. How much longer life will you get out of it?

A. An average of six runs I should say.

Q. At Natchitoches, what about the switch board and instruments?

A. The switch boards and instruments at Natchitoches, are new, having been installed within the past fifteen months; I don't remember the exact date.

Q. What was the reason for that new installation?

A. There was two reasons. One was the fact that the instruments principally in use, were not giving a good service; that was the reason for setting it outside of the subscriber's station equipment, and the switchboard in use was practically worn out, and, in addition to that, we were moving to new offices.

Q. At Plaquemine, La.?

A. Both switchboard and instruments in good condition.

Q. How much longer will they last?

A. According to the care; they should live from 6 to 8 years.

Q. And in Ruston, what is the condition of the switches and instruments?

A. In good condition.

Q. How much longer would they last?

A. I should say from 6 to 8 years.

Q. What is the condition of the switchboard at Shreveport?

A. The switchboard and instruments at Shreveport are in good condition. The *Shreveport* at Shreveport, however, has practically reached its capacity, so that we are not pushing to install additional business. In order to install additional business, that is, to take on additional subscribers, it will be necessary for us to put in entirely new equipment, and that will carry with it a change of the subscribers' station instrument as well as the Central office equipment. The company has not decided to do that, for the reason that the rates are not satisfactory at Shreveport, not remunerative.

488 Q. At Clinton, La., what is the condition of the instrument and switch?

A. The instrument and switch is in fair condition.

Q. How much longer will it last?

A. The instruments about five or six years and the switch-board about three years.

Q. How much longer will the switch board and instruments at Shreveport last, provided you have the number of subscribers the same?

Q. We would get 5 or 6 years additional life with them, but that is predicted on our just letting it alon*g* and not carrying forward any additional lines.

By Judge GUION:

Q. You have not decided to get any additional subscribers?

A. No, we are not, we are not perpared to handle the business.
Q. Why not?
A. For the reason that the change in equipment will involve an expenditure of about $40,000, and the company, at the present rates in Shreveport, lost money last year.
Q. At the present rates in Shreveport?
—. Yes, sir.
Q. Are the rates in Shreveport any different than at any other town?
A. Yes sir, they are lower for the number of subscribers.
Q. How is that brought about?
A. By the gradual increase in the business it naturally grows.
Q. No, but how is it, is the rate any different in Shreveport than at Baton Rouge?
A. There are more than twice as many telephones in Shreveport than at Baton Rouge.
Q. But the rate is the same?
A. No, the rate is different.
Q. You are speaking of exchange service?
A. The larger the exchange, the greater the number of subscribers, the higher the rate.
489 Q. But the rate is set forth for toll lines by the Railroad Commission?
A. Yes sir, and the rates in Shreveport, or the rates fixed by the Commission, are not renumerative.
Q. Why is it that they are not renumerative, when they are renumerative at Baton Rouge?
A. From the fact that you increase the size *the size* of your capital. If an exchange increases in the number of telephone- in use, the cost per telephone increases, and the rate must necessarily increase, and you reach a point where you — taking on business without profit.
Q. Does that same rule apply at Baton Rouge?
A. No, sir.
Q. Why?
A. For the reason we have not reached the point.
Q. There is no competing line at Baton Rouge?
A. No sir.
Q. You have competition at Shreveport?
A. Yes sir.
Q. Does not that competitor find it renumerative?
A. I do not think they do.

Mr. M'CALEB:

Q. If the rates were raised at Shreveport so that it would become renumerative wouldn't you instal that new equipment?
A. Yes, sir.
Q. Now, Mr. Powell, you testified in your direct examination, before, relative to depreciation. In giving your opinion, were you acquainted with the original cost of the different materials used in the construction of telephone property?

A. No, I gave my opinion based on my recollection of the average life of the material, not the cost of it.

Q. How can you arrive at an opinion in that way?

A. The average depreciation is not affected by the cost of the property, the depreciation is not affected by the cost.

490 Q. You don't think so?

A. No sir, it is affected by time, by the time that the material being considered would last.

Q. Suppose the original cost of your conduits in the city of New Orleans, we will say, is a million dollars, and the cables going through them cost you three million dollars, how would you arrive at the depreciation of the conduits and the cables; what is the net depreciation?

A. I see what you are driving at; that is that the depreciation on different classes of material would be a different percentage.

Q. Yes?

A. That is correct, but the average depreciation is what I was driving at. The average depreciation is, of course, affected to some extent by knowledge of the cost.

Q. I as I understand you arrived at this estimate merely from the life of material?

A. Of different material and the knowledge of the percentage of different materials going to make up the whole.

Q. If you spent more money in conduits and less money in poles, or in aerial structure, wouldn't that finally affect the percentage of depreciation?

A. Yes, sir.

Q. Do you know what the cost of underground conduits are in New Orleans?

A. I have a pretty good idea; I could not give the exact figures. I say I have a pretty good idea, for the reason that the work was done directly under my supervision, and I approved all vouchers and pay rolls. The amount expended for underground conduits according to my recollection, is in the neighborhood of $340,000.00.

Q. Your Company purchased from the People's Telephone Co., the underground conduits placed here in this city?

A. Yes, sir.

Q. Do you know about what the value of those underground conduits were at the time they were purchased?

A. The value of those conduits—I remember estimating

491 the value at the time the company purchased the property. I placed it at about $80,000 at that time. We purchased that property at a bargain, and my recollection is that we paid about $28,000. I remember making the trade, but I don't remember the exact figures; but it was somewhere in that neighborhood. We purchased the conduits at about one-third at what I estimated the value to be.

Q. In your estimate of the cost of the conduits laid here in New Orleans, did you consider the cost of cable in that?

A. No, sir.

Q. So the cost of the cable is separate?

A. Yes, separate.

Q. What was the cost of that cable?

A. I don't remember the value of the cables in New Orleans separate, the conduits and the aerial, and I don't remember the number of feet. We made up the report about the first of the year, but I have forgotten the figures. There is practically no difference between the value of cables on poles or in conduits, so far as the cable is concerned.

Q. You have testified that your company put in a general deal of creosoted poles, in fact that the majority of your pole equipment consisted of creosoted poles. Can you state about how much more creosoted poles you have in Louisiana than heart cypress poles and red cedar, about?

A. I estimate that sixty per cent. of our timber, that is our poles in the State of Louisiana, are creosoted pines; that the remaining 40 per cent. is divided up between cypress, red cedar, white cedar and ches-nut.

Q. Isn't the balance of the forty per cent. made up mostly of sawed heart cypress and red cedar?

A. No, I think that it is possibly half of that.

Q. In other words about 20 per cent.?

A. Yes sir, and that the other 20 per cent. is round cypress and ches-nut.

Q. And ches-nut?

A. Yes sir, round cypress and ches-nut.

492 Q. Now, what is the value—the average value—of a creosoted pole put up?

A. I couldn't give you an average value.

Q. The average cost?

A. I couldn't give you the average cost. I assume it would be fair to take a thirty foot pole as the average. There are a great many more 22 and 25 foot poles than any other sizes, particularly on account of the country lines. A 30 foot pole set, would be worth about $6.

Q. What would the cost be in pole mileage?

A. They would average 30 poles to the mile.

Q. That is $180 a mile?

A. Yes sir, that is figured as creosoted poles.

Q. What would be the cost of sawed heart cypress poles, set?

A. Practically the same as the creosoted.

Q. The same thing?

A. Yes sir.

Q. In other words, it would cost to set a mile of poles of heart cypress—sawed heart cypress, $180.?

A. Yes, figured on an average length of 30 feet, but all construction work differs with almost every job.

Q. What is the cost of your aerial strand, have you any aerial strands?

A. Yes, sir.

Q. What is the cost?

A. I don't remember the cost of the strand, I rarely ever see the bills for purchases.

Q. You know the cost of your aerial cable terminals?

A. I have never figured out the cost. These terminals range from five pair to one hundred pair of conductors and the cost differs according to the number of conductors.

Q. Have you much of these terminals?

A. Yes, sir.

Q. Now, how much copper wire have you got in this state
493 set?

A. I don't remember; those figures are given in our report to the State Board of Appraisers, exactly.

Q. You know the cost of it—the cost of copper wire about?

A. Yes, the wire that we have put up, costs about fifteen cents a pound, as it was mostly put up, almost all of it, more than two years ago. That same copper wire to-day would cost us about 24 cents per pound.

Q. What would that cost be in mileage?

A. We use three sizes of copper wire. One size we have at 103 pounds a mile; one size at 168 pounds per mile, and the third size, of which we have very little, 410 pounds per mile.

Q. Now, as to aerial galvanized iron wire. How much of that have you in this State?

A. We have many thousand miles, I don't remember, probably forty or fifty thousand miles of it.

Q. The report shows about fifteen thousand miles?

A. That shows the wire used for toll wire only; the exchange wire is in a separate report of toll lines.

Q. Do you know the cost of this iron wire?

A. Yes, the cost is about $3 per mile, laid down.

Q. What is the cost, laid down, of copper wire?

A. These figures I gave you per pound.

Q. On the basis of what it cost two years ago?

A. Copper wire per mile costs us for number 14, about $15.45 per mile; for number 12, $25.20 per mile, and No. 8, $61.50 per mile.

Q. The life, Mr. Powell, of copper wire depends a great deal upon the gauge or is the life the same for all gauges?

A. The life depends, altogether on the strain to which the copper wires are subjected. Now, by that I mean that copper wire, has frequently been broken down by trees falling across it, and the duration of the wire is less than copper wire not subjected to such strains. I do not think the atmosphere exerts any considerable influence in the life of copper wire. It affects it to some extent in some localities, but not to any appreciable extent.

494 Q. Now, do you know the cost of those subscribers' sets, the instruments I believe they call it station instruments?

A. Yes, that depends on the kind of instrument being used. I

should say the average cost would be in the neighborhood of $8 to $8.50 per set.

Q. Do you have any private branch exchanges switches?

A. Yes sir.

Q. About how many have you in this State?

A. Private branch exchanges something less than 100; possibly between 85 and 100.

Q. What are they worth?

A. I do not think they would average over $100.

Q. How many central office switch boards have you?

A. I think the total number of central office switch boards is 64.

Q. Do you know the cost of the switchboards here in New Orleans?

A. No.

Q. You know about what it is worth?

A. I think I can come pretty close to it. I have a pretty fair idea of that thing.

Q. Take the three stations—you have three stations?

A. Yes sir.

WITNESS: This would be an estimate only; I have not seen the bill and I am simply making it up from my general knowledge of the equipment. I would estimate the value of the central office equipment from $275,000 to $300,000.

Q. Now, outside of New Orleans, do you know about what they are; some are worth more than others?

A. Yes, without looking in the record it would be a considerable guess. I couldn't give you any definite answer of that.

Q. Do you have teams or live stock and wagons?

A. Yes sir.

495 Q. How much of those have you?

A. We have possibly 150 head of stock in the State.

Q. What is it worth per head?

A. It would average about $90 all around.

Q. And the wagons?

A. Yes sir, we have wagons, we have possibly counting the trouble vehicles as wagons, we would have about 125 wagons.

Q. What are they worth—what do they cost.

A. The average cost would not exceed $40 new. I should say the average value would not exceed $30.

Q. You have testified that you base the life of central office switchboards at about 12 or 13 years?

A. Yes sir.

Q. You think that is a fair estimate?

A. I think so.

Q. You have taken into consideration the usual maintenance of the switchboards during that life?

A. Yes sir.

Q. Would that life apply to the private branch exchanges?

A. I do not think so; I do not think the average life of a private branch switch board would exceed ten years, for the reason that they do not receive the same care and attention that the switchboards in our office receive. We can't exercise the same supervision with the

employees of the firm that are outside; I doubt whether we would get more than 7 or 8 years life.

Q. You have stated about what they cost, that the- average about $100?

A. Yes sir, that is somewhat of a guess.

Q. How many have you got there?

A. Less than a hundred.

Q. What do you put the life of aerial copper wire at?

A. I should think that we could average the life of aerial copper wire at 20 years before it would have to be taken down and sold as junk. The only lines that I have had to take down, were lines that had been put up 14 years ago. I took them down and sold it for junk, two lines they were; they were taken out of the service on account of loss of tensil- strength.

496 Q. Where was that?

A. There were three instead of two lines, running from New Orleans to Fort Jackson, and a line running from New Orleans to Pointe a la Hache, a line running from New Orleans to Donaldsonville.

Q. This line running towards Fort Jackson, is that not in a section running towards the Jetties?

A. Yes sir.

Q. Leading out to the Gulf of Mexico.

A. Yes sir.

Q. Are not those lines subject to storms and wind storms and calamities of that kind?

A. Yes sir, but not more so that other portions of the State, we didn't go far enough down to get ocean storms; they end at Fort Jackson and on the Pointe a la Hache side of the river; it is only a distance of 40 miles.

Q. But don't you know it is not a distance of one mile from Pointe a la Hache to the Gulf?

A. You mean across the land? I do not think the distance is very great; it is a narrow strip of land.

Q. Don't you know that the distance from Fort St. Philip, which is on the other side of Fort Jackson, across the Mississippi River is about one mile and the distance from Fort St. Philip is about one mile making it two miles distance from the Gulf to Fort Jackson?

A. I expect those distances are correct. But we are not bothered with timber falling on the wires like in other portions of the State.

—. But don't you know as an actual fact that the severest storms we have had in this section of the country—I am speaking of continuous storms, not storms that occur at long periods—occur mostly down in that section of the State between New Orleans and Forth Jackson and Pointe a la Hache?

A. I think we have more wind down there.

497 Q. What is the salvage on aerial and underground cable, after you take it out or off?

A. The value is rather high. The salvage is about I expect at least 20 per cent.

Q. I am referring now Mr. Powell to cable No. 8 which has been

offered in evidence here, of a report of the Telephone Co., of Chicago, and they put the salvage down for underground cable, main, subsidiary and aerial at 40 per cent. Do you think that that is a fair estimate?

A. Yes sir, for Chicago. It would not run that high here for the reason that we would have to pay freight on to Chicago on the cable, freight on the reels back and allowance of freight from this point to the smelters of the copper; whereas Chicago is one of the central markets for such material.

Q. And that is why you put the salvage at less than there?

A. Yes sir, that would save us this freight and the handling.

Q. How many years do your teams or your life stock last?

A. We get an average use of five years out of live stock; an average life of not exceeding three years out of vehicles.

Q. The average of both would be about four years?

A. Yes sir.

Q. After the live stock is worthless to you, you have to buy new stock?

A. Certainly.

Q. What do you do, sell the old stock.

A. We get anywhere from $15, to $25 or $30 for them.

Q. In other words it would be about from 15 to 30 per cent.?

A. Yes sir.

Q. Where a horse costs $100 as soon as that horse can't be used any longer, you sell it for how much?

A. I don't think we get an average of more than $25 for the horses.

Q. Of course if they die——

A. We don't get anything; and they die on our hands
498 like with any other people.

Q. Take the wagons?

A. The wagons are used until they are a total loss. We occasionally sell one for four or five dollars, but when we get through with — they are not of much value to anybody else.

Redirect examination.

By Mr. GRANBERY:

Q. There are two questions on which I neglected to ask you on direct examination. Please state whether or not the South Western Telephone Co. operating toll lines in Louisiana, has any separate rate or lower rate for night and Sunday service from their regular day rates?

A. No, they charge the day rates for regular messages whether at night or on Sunday.

Q. How many miles of toll rates is that company operating in Louisiana?

A. I could state the mileage. They operate along the Kansas City Southern Railroad from Lake Charles to Shreveport, and they have lines running from Stark to Beaumont. That is partly in

Texas; that would be in the neighborhood of 200 miles of poles lines; and they also operate exchanges at different points along their system.

Q. How many miles of pole route does the North Louisiana Telephone Co., operate in Louisiana?

A. It is in the neighborhood of 150 miles. Their line to Winnfield has been completed and would make 150 miles.

Q. Has the Cumberland Co. any interest in that Co.?

A. No sir.

Q. A letter was filed with Mr. Barrow's deposition about which he testified. I will ask you to state whether or not the Cumberland Telephone Co. had any contract with any parties in Tangipahoa Parish for the purchase of poles?

A. No sir, we did not.

Q. Where do you buy your pine poles?

499 A. We don't buy untreated pine poles at all. The creosoted pine poles have all been bought in New Orleans from the American Creosoting Works and the New Orleans Wood Preserving Co. We buy the poles finished, that is treated—the treated timber.

Q. So that the dealings of the people who own and cut the timber, is with the Creosoting people and not with the plaintiff company, is that correct?

A. That is correct. We have no dealings with the people who get out the timber at all.

Q. Is that so with reference to the last three or four years?

A. It is true continuously; we have not, at any time purchased the timber since we have been using creosoted poles.

Agreement.

It is agreed that when the testimony of the witness is written out, the witness' name shall be signed by the stenographer.

Note.

The plaintiff here closes its case.
The defendant is ready also.

500 *Deposition of George Wilkinson.*

Filed Aug. 15, 1907.

In the United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

Nos. 61 and 66, Consolidated.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

STATE OF NEW YORK, *County of New York, ss:*

Interrogatories Propounded to George Wilkinson and His Answers Thereto.

(Transmitted by George Wilkinson to the Clerk of the United States Circuit Court at New Orleans, La., to be used as evidence on behalf of the plaintiff in the above entitled causes.)

Q. 1. Please state your name, age, residence and occupation?

Answer. George Wilkinson, Age 47, 127 East Sixth Street, Plainfield, New Jersey. Certified Public Accountant. (Holder of Certificates from University of New York, University of Illinois, State Board of New Jersey, State Board of Pennsylvania.)

Q. 2. How long have you been engaged in your present occupation?

Answer. As Clerk, Manager and Principal since January 2nd 1887, (twenty years). Presently senior partner in the Firm of Wilkinson, Reckitt, Williams & Company.

Q. 3. Have you ever had any experience in the investigation of the Cumberland Telephone and Telegraph Company's records, if so, how long, when were you engaged upon the work and state whether the examination of those books and records as made by you, was thorough and complete, or not?

501 Answer. (*a*) In August and September 1900; Approximately two months, including reporting upon said examination.

(*b*) Examination of the Company's books and records made by me was th-rough and complete in regard to the business done in the City of New Orleans and in the State of Louisiana.

Q. 4. Please state whether or not you examined those records with reference especially to the State of Louisiana and if so, whether you ascertained from those books and records, what per cent. of the cost of properties was necessary and proper to be charged against the properties for depreciation, over and above the charges for ordinary maintenance and current repairs?

Answer. (*a*) As above, my examinations had especial reference to the State of Louisiana and City of New Orleans.

(*b*) I ascertained from the books and records, of the Cumberland Telephone and Telegraph Company, that a proper charge for Depreciation, over and above the charges for ordinary maintenance and current repairs, should be calculated at the rate of ten per cent. (10%) per annum on the actual cost of the properties, exclusive of Real Estate.

Q. 5. Have you done any other work for Officials or corporations, or citizens in the State of Louisiana, if so, please state in a general way the character and extent of such work and when it was done?

Answer. (*a*) Prior to 1898 I audited the accounts of the Palatine Fire Insurance Company for the Company's Head Office in Manchester, England.

502 (*b*) In August 1899, I examined the books and Accounts of the Sun Insurance Company of New Orleans for the Commissioner of Insurance and reported thereupon to Honorable Eugene J. McGivney at Baton Rouge, La.

(*c*) Subsequently, in 1900, I examined all of the other Fire Insurance Companies domiciled at that time, in the State of Louisiana, for the same authorities.

Q. 6. Please state whether or not you have, since your investigation of the records of the Cumberland Telephone & Telegraph Company, studied the question of Depreciation of telephone properties, if so, state to what extent and in what way you have made this study?

Answer. Since 1900 I have further studied the question of depreciation and have discussed same with other Accountants of considerable practice, both in meetings of professional societies and privately. In 1902 I read a paper to the Illinois Association of Public Accountants, of which I was then President, entitled: "Proper Charges for Depreciation of Plant." On 1st May 1905, I delivered a lecture to the Evening School of Accounts and Finance at the University of Pennsylvania, Philadelphia on the subject of "Depreciation and Reserves."

In preparing for the above mentioned, I studied the question of depreciation, reading papers and lectures by Accountants, Engineers and others qualified to write thereupon.

Q. 7. Are you familiar with the fact that in the last two or three years, the cost of materials entering into the construction of telephone plants has largely increased: If so, state your knowledge of the probable increase?

503 Answer. Yes: As a Certified Public Accountant practicing throughout the United States, my observation has proven to me that there has been an enormous increase in the costs of materials entering into construction work of all kinds.

Q. 8. Please state what you would regard as a proper per cent. to be charged off out of earnings, for depreciation at the present time and for the past two or three years, on the original cost of the properties of the plaintiff company in Louisiana, based upon your knowledge of its affairs as derived from your examination of its books and

records and your knowledge of the increased cost of the materials entering into the construction of a telephone plant, for the last two or three years?

Answer. I believe that a proper charge for depreciation of a telephone plant should be computed at the rate of ten per cent. (10%) per annum on the cost of the plant at the current prices of materials and labor. I believe that this rate was proper in 1900 on the cost of the telephone plant at that time, and I believe *the same rate* is equally proper now, in 1907, on the largely increased cost of to-day. However, a charge of ten per cent. (10%) per annum, on the cost of a plant constructed in 1898, based on much lower prices than prevail now, would, in my opinion, be too small a charge to make for 1906 and 1907.

Q. 9. State any fact within your knowledge which will add to or elucidate any of the foregoing interrogatories.

Answer. In writing off ten per cent. (10%) per annum for depreciation, plant account is not written off entirely in ten years, as some suppose; but it is generally reduced by the sum which diminishes each year. Thus:—the charge for the first year is 10%; the charge for the second year is 9%; that for the third year is 8 1/10%; for the seventh year is 5.314%; for the tenth year 3.874% and for the fourteenth year 2.542% of the original principal. Thus at the end of the fourteenth year there remains 22.9% of the original principal.

504 I therefore regard a charge of ten per cent. (10%) per annum on the value of the plant, actually in use throughout the year, to be a very reasonable and conservative charge; it provides out of the earnings for the decay of the out-of-door plant and for the superannuation of the in-door equipment, distributing the charge evenly over the *the* life of the business.

505 *Cross-interrogatories and Answers Thereto by George Wilkinson.*

X Q. 1. Isn't it a fact that your examination of the books of the Cumberland Telephone and Telegraph Company made some time in 1900 covered an investigation of the exchange service in New Orleans, Shreveport, Baton Rouge, Lake George (Lake Charles), New Iberia and twenty-three other towns in Louisiana?

Answer. The examination made by me in 1900 covered an investigation of the business done by the Cumberland Telephone & Telegraph Company from 1st March 1898 to 1st March 1900—a period of two years. Particular attention was given to the accounts of the Exchanges named in X Q. 1, which accounts were examined in detail.

X Q. 2. Isn't it also a fact that the toll line service as distinguished from the exchange service, did not include any investigation of the latter?

Answer. The toll line service rendered by the Company within the State of Louisiana—the revenues arising therefrom and the expenses of conducting the toll service—were examined by me in 1900.

X Q. 3. What do you mean by Depreciation?

Answer. I mean by Depreciation:—"Depreciation may be defined as the loss in value of some destructible property over and above current repairs"—Quoted from a lecture by the deponent delivered 1st May 1905, to the Evening School of Accounts and Finance of the University of Pennsylvania, at Philadelphia.

X Q. 4. Please state the source of your information. Was it from hearsay or what other people told you or from personal knowledge or experience in the telephone business?

506 Answer. The information upon which my knowledge of the telephone business in the State of Louisiana is based was derived from a personal examination, made in the summer of 1900 by myself, assisted by three competent Accountants, of all the books of account, Records, Pay-Rolls, Invoices, Exchange reports and other data of the Cumberland Telephone & Telegraph Company, also from personal inquiries made by me from various Employees of that Company. Such examination of records and employees and the report made by me thereupon was made under Instructions (dated July 12th 1900) from the Railroad Commission of Louisiana.

X Q. 5. Please state the extent of your experience, if any, in the telephone business.

Answer. In addition to the personal experience indicated in the foregoing answer, the Firm of Certified Public Accountants of which I am senior member, has from time to time conducted examinations into the affairs of telephone companies, and, when available for that duty, I have had advisory superintendance of the work.

X Q. 6. Have you studied the question of Depreciation of telephone properties?

Answer. Yes; as fully stated in direct testimony.

X Q. 7. What do you consider the life of underground conduits? The life of creosoted poles, the life of cypress poles, sawed cypress poles, heart cypress poles, and red cedar poles, and what do you consider the life of the cross arms?

Answer. As previously testified my experience of the telephone business is that of an Accountant, who has investigated closely the affairs of a certain telephone company.

507 (*a*) As to underground conduits—At the time I examined the affairs of the Cumberland Telephone & Telegr*p*h Company, it could not be determined how long the conduits, then newly laid in the City of New Orleans, would last. There was no available data as to the probable life of wood in a soil saturated with moisture. At that time however, I did form the opinion that the life of the conduits in New Orleans would be considerably shorter than in drier and better drained cities.

(*b*) I am not sufficiently familiar with the several kinds of poles, enumerated in the question, to state separately what I consider to be the life of each.

X Q. 8. State also the life of iron wire, galvanized and ungalvanized. The life of copper wire. The life of a switch board and its appurtenances. The life of interior wiring. The life of cables

and aerial and submarine cables. The life of cables also in underground conduits, properly constructed.

Answer. (*a*) My knowledge of the life of iron wire, galvanized and ungalvanized, and of copper wire, is not sufficient to enable me to determine the respective life of each, which would vary under different atmospheric conditions.

In the course of my investigation of the records of the Cumberland Telephone & Telegraph Company, I ascertained that the telephone plant built by the Great Southern Telephone & Telegraph Company in New Orleans between 1883 and 1885, had to be thrown out of service in 1899. In 1899 nothing remained of all that plant, worth while embodying in new construction, except about a couple of hundred old cedar poles.

508 This specific data denotes a life, for such poles and wire, as were used in 1883-1885 in the City of New Orleans, of approximately fifteen years.

(*b*) As to the life of the switch-board and its appurtenances and interior wiring;—in this connection must be considered, in addition to the depreciation arising from actual wear and tear, the question of obsolescence. The life of the switch-boards in four of the larger cities served by the company is a matter of record, on the books of the Cumberland Telephone & Telegraph Company:—

The Memphis switch-board was installed in 1888; it was taken out in 1900;

The Nashville Switch-board was installed in 1885; it was to be taken out in the fall of 1900;

The New Orleans switch-board was installed in 1884; it was taken out in 1898;

The Louisville switch-board was burned by accident and was therefore not available for this purpose.

In each case the switch-board was taken out with all the interior wirings, dependent instruments and appurtenances; not because the switch-board was absolutely *worn out* from actual use, but largely because it had to give way to more modern apparatus installed at increased cost. This specific information denotes that the life of the switch-boards and their appurtenances, having due regard to obsolescence as well as to wear and tear, was approximately from twelve to fourteen years.

(*c*) As to the life of cables and aerial cables I am unable to state specifically: as to the life of submarine cables, the information obtained in 1900 was that the life of submarine cables was extremely short, owing to the conditions under which same were laid

509 and the frequent interferences therewith when crossing navigable waters.

(*d*) As to the life of cables in underground conduits, I have no information on which to base an answer.

X Q. 9. Please state the salvage, if any, on the foregoing equipment and their parts.

Answer. In making my examination of the Cumberland Company's records in 1900, I learned that the old switch boards taken out from Memphis and Nashville in 1900, and from New Orleans in 1898, were practically of no value, when torn out of the tele-

phone exchanges: they could not be used for any other of the company's exchanges, being old fashioned and had to be cold as so much junk. There is a considerable salvage in aerial copper wire, but little or nothing on interior wiring. As to the salvage on cables, submarine cables and iron wire, I have no information.

X Q. 10. What is the depreciation on the building owned by the Cumberland Telephone & Telegraph Company in New Orleans and Shreveport?

Answer. (*a*) In my opinion, the depreciation on the building owned by the Cumberland Telephone & Telegraph Co. in New Orleans, being a substantial brick building in the business section, should be computed at two and one-half per cent. (2½%) per annum, if depreciation on this property is calculated separately.

(*b*) As I have no personal knowledge of the building owned by the Company at Shreveport, I am unable to state what would be a proper charge for depreciation.

510 X Q. 11. Has the real estate in New Orleans and Shreveport, La., appreciated in value or depreciated in value and state the extent of your knowledge in this regard?

Answer. From information received within the last year, I have learned that the value of Real Estate in New Orleans has appreciated in value considerably since 1900, but to what extent this applies to the land owned by the Cumberland Telephone & Telegraph Company I am unable to state.

X Q. 12. If telephone properties are reconstructed or rebuilt before the time they become useless, from what source or what fund is the money taken to pay for such rebuilding or re-construction?

Answer. Where telephone properties are substantially reconstructed, the cost of such re-construction may be taken from Depreciation Reserve Account or any similar fund that has been built up from charges made against previous years' earnings.

X Q. 13. In your estimate of depreciation, have you considered the matter of interest and insurance?

Answer. In arriving at ten per cent. (10%) per annum for depreciation, no account was taken of interest or insurance.

X Q. 14. Have you considered the matter of re-construction as distinguished from new construction?

Answer. Yes; I have carefully considered the distinction between re-construction and new construction.

X Q. 15. To what account is re-construction, considered apart from depreciation, chargeable?

511 Answer. Where a Company buys an old plant, in a run-down condition and re-constructs the plant anew, in all its parts, as did the Cumberland Telephone & Telegraph Company in New Orleans in 1898, the entire cost of re-construction, is in my opinion, chargeable to Capital (or plant account). On the other hand, where a company has allowed its own plant to run down to a point requiring re-construction, the cost of same should be charged to depreciation reserve, or other reserve account built up from charges against previous years' earnings.

X Q. 16. Have you considered in your estimate of the life of telephone properties, the atmospheric conditions?

Answer. In determining the life of telephone properties in the City of New Orleans, as told in previous answers, the atmospheric conditions existing in that city were necessarily considered, as they had largely to do with the decay of the out-door equipment.

X Q. 17. What effect has the humidity of the atmosphere upon creosoted poles, or upon cypress and red cedar poles, considered in the light of their life?

Answer. My answer to this question must be the same as to X Q. 7. I have no information on which to give a specific answer.

X Q. 18. State its effect upon other parts of telephone properties above enumerated.

Answer. In the course of my investigation in 1900, while interrogating witnesses who were intimately familiar with the
512 effect of the humidity of the atmosphere upon interior telephone equipment, I learned that the rapid rusting of all exposed metallic parts (other *the* copper), due to the excessive dampness, had largely to do with the wearing out of the interior equipment.

X Q. 19. Have you made any examination of the books of the Cumberland Telephone & Telegraph Company since the examination made at the request of the Railroad Commission in October 1900, If you answer yes, state when and for what purpose the examination was made.

Answer. In September and October 1903, I visited the Head Office of the Cumberland Telephone & Telegraph Company at Nashville, Ten., and there made an examination of the system of reporting, bookkeeping, recor-ing, filing, etc. Subsequently, I visited Memphis, Tenn., Louisville, Ky., and New Orleans, La., and similiarly examined the methods in force at the Company's exchanges at those points. all with the view of suggesting more economical and more efficient methods of bookkeeping, recording, etc. On October 23rd, 1903, I reported upon these visits, suggesting modifications in the Company's methods; said report being addressed to James E. Caldwell, Esq., President, Cumberland Telephone & Telegraph Co., Nashville, Tenn.

X Q. 20. Upon the examination made by you in October 1900, was it not made for the purpose of determining the reasonableness or unreasonableness of the exchange rates in New Orleans and for no other purpose?

Answer. Examination made by me in August and September 1900, was made on behalf of the Railroad Commission of Louisiana, principally for the purpose of determining the reasonable-
513 ness or unreasonableness of the rates charged in New Orleans and the principal cities throughout Louisiana. Also to determine the Net Income derived by the Cumberland Telephone & Telegraph Company from its business in New Orleans and Louisiana, and the percentage that Net Income was on the amount of Capital invested in that city, and in that State.

(Signed) GEO. WILKINSON.

Interrogatories and Cross Interrogatories read and answered and with the answers sworn to and subscribed before me, a notary public in a-d for the County of New York, duly commissioned and sworn and residing in the said County, and an Officer authorized by the laws of the State of New York to take the acknowledgment and proof of deeds and conveyances of land to be recorded therein, this twelfth day of August 1907.

(Signed) HENRY BENNETT LEARY,
[SEAL.] *Notary Public, New York County.*

514 *Note of Evidence on Behalf of Defendant.*

Filed August 19, 1907.

In the Circuit Court of the United States for the Eastern District of Louisiana.

No. 61 and 66, Consolidated.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Note of Evidence on Behalf of Defendant.

In accordance with the rules of practice of the Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana, particularly rules relative to the final hearing of equity causes, adopted May 2, 1880 to be found on page 16 of the rules of this Honorable Court, Counsel for Defendant offers the following evidence, and ask that the same be noted by the clerk and that this note of evidence shall be entered on the minutes of the court:

1. Deposition and testimony of W. M. Barrow, taken before E. M. Fuller, Commissioner, on Friday August 16, 1907, and on Saturday August 17th, 1907.

2. The statements, documents and exhibits annexed to said deposition.

3. Exhibit No. 3.

4. Exhibit No. 1, attached to the deposition of James E. Caldwell and Exhibit No. 3.

5. The annual Report of the Cumberland Telephone & Telegraph Company to the Railroad Commission of Louisiana, together with the affidavit of T. D. Webb, Treasurer of said Company, of
515 date August 18, 1904, before W. H. Baker, Notary Public, County of Davidson, State of Tennessee; marked D-5.

6. Annual Report of the Cumberland Telephone & Telegraph Co. to the Railroad Commission of Louisiana, for the year 1905, together with the affidavit of T. D. Webb, before J. C. Synes, Notary Public, for the County of Davidson, State of Tennessee, marked "D-6."

7. The April statement for the year 1907, issued by the Cumberland Telephone & Telegraph Co., marked "D-19."

8. Statement for the month of May 1907, marked "D-18."

9. Statement for the month of June, 1907, marked "D-20."

10. General Balance sheet for the year ending June 30, 1904, marked D-21.

11. General balance sheet for the year ending June 30, 1905, marked "D-22."

12. General balance sheet for the year ending June 30, 1906, marked "D-23."

13. Order No. 488 of the Railroad Commission of Louisiana, marked "D-2."

14. Order No. 552 of the Railroad Commission of Louisiana, marked D-3.

15. Statement of rates, marked "D-4."

16. Statement of total gross earnings of the Co. for the years 1904, 1905 and 1906, marked "D-16."

17. Exhibit No. 2, being the annual statement of the Cumberland Telephone & Telegraph Co. to the Railroad Commission of Louisiana for the year ending June 30, 1906, marked D-7.

18. Statement showing the rates of each item in Louisiana to the total expenses on June 30, 1906, marked "D-8."

19. Statement showing the ratio of each item of expense in Louisiana to the total expense on June 30, 1905, marked D-9.

20. Statement showing the ratio of each item of expense in Louisiana to the total expenses on June 30, 1904, marked D-10.

21. Comparative statement of earnings and expenses of the Cumberland Telephone & Telegraph Co. in the State of Louisiana,
516 as shown by sworn statements of the said company to the railroad Commission, marked D-12.

22. Statement of dividends declared marked "D-13."

23. Statement of the Value of property in Louisiana, as shown by the annual sworn reports of the Cumberland Telephone & Telegraph Company to the Railroad Commission of Louisiana, for the years ending June 30, 1904, 1905, and 1906, respectively, marked "D-14."

24. Grand Total of expenses for Louisiana of the Cumberland Telephone & Telegraph Co., marked "D-15."

25. Statement of the Capitol Stock for the year 1904, 1905 and 1906, marked "D-17."

26. Also "D-11."

27. Exhibit marked "D-1."

517 *Defendant's Evidence.*

Testimony on Behalf of Defendant.

Filed August 19, 1907.

In the Circuit Court of the United States for the Eastern District of Louisiana.

No. 61 & 66, Consolidated.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
RAILROAD COMMISSION OF LOUISIANA.

Testimony taken and evidence offered on behalf of Defendant, in the above numbered and entitled cause, on Friday, August 16th, 1907, before E. M. Fuller, Esq., Examiner, as per order of appointment dated July 30th, 1907, at New Orleans, La.

Appearances.

W. L. Granbery Esq., for Complainant.
Walter Guion, Attorney General, and E. Howard M'Caleb, Jr. for Defendant.

W. M. Barrow.....Page 2.

(Rep'd by D. Wendling, St'r.)

518 W. M. BARROW, a witness for the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. M'CALEB:

Q. Mr. Barrow what position do you at present occupy?
A. Secretary of the Railroad Commission of Louisiana.
Q. How long have you occupied that position?
A. For about eight years, practically since the organization of the Commission.
Q. Prior to that time what position did you hold?
A. Why, I was connected with the Interstate Commerce Commission of Washington, D. C., in the statistical department.
Q. Any other besides that?
A. Also was Court stenographer.
Q. Now, Mr. Barrow, has your connection with the Interstate Commerce Commission, in the statistical department and with the Railroad Commission of Louisiana given you opportunities for inquiring into the making of rates?

A. Well, not my connection with the Interstate Commerce Commission; but since I have been connected with the Railroad Commission of Louisiana, one of my duties has been to examine into rates annual reports and statements made to the Commission and to make recommendations from time to time to the Commission.

Q. Do you consider yourself qualified in the matter of rate regulations?

A. I consider myself qualified to form opinions.

Q. Now, Mr. Barrow, I show you a map, showing the lines—the toll lines in the State of Louisiana, of the Cumberland Telephone & Telegraph Company; also the exchange toll stations Who furnished that map, or was that map furnished to the Commission?

519 A. That is a blue print map furnished to the Commission by the Cumberland Telephone & Telegraph Company as part of its annual report to the Commission, for the year ending June 30th, 1906, showing the lines of the company together with the toll stations in the State of Louisiana, and the exchanges on that date; and it also shows, I may say, the lines of other telephone companies, showing the independent companies, and those which are leased or subsidized by the Cumberland Telephone & Telegraph Company.

Q. In other words sub-licensees?

Mr. GRANBERRY: You don't mean subsidized?

A. No, sub-licensed.

Q. What lines show—what are the colors showing the line of the Cumberland Telephone & Telegraph Company?

A. The Cumberland Telephone & Telegraph Company's own lines are shown in white.

Q. Now, looking on the map, Mr. Barrow, I notice in the lines extending west from the City of New Orleans, the words "Postal Company's Polls." Can you tell me what that means?

A. I understand that to mean that the Cumberland Telephone & Telegraph Company uses the Postal Company's poles for stringing its wires between Sabine River and Lafayette, and Morgan City to Schriever.

Q. I also notice on the line from New Orleans extending East "A. T. & T. Co. Poles" what does that mean?

A. I understand that to mean that the Cumberland Telephone & Telegraph Company uses the American Telephone & Telegraph Company's poles from New Orleans to where the line enters the State at Pearl River.

Offer Mr. M'CALEB: In connection with the testimony of the witness, I offer in evidence the map referred to, which is marked for identification "D-1."

Q. Mr. Barrow, when was the first order issued by the Railroad Commission fixing telephone toll rates in Louisiana?

520 A. I will have to look at the order (Witness does so). On December 13, 1905, the rates to become effective January 1st, 1906.

Q. What is the number of that order?
A. Order No. 488; this is just a carbon copy.

Offer Mr. M'CALEB: I offer the order in evidence, which is marked for identification "D-2."

Q. At whose instance and request was this order entered by the Commission?
A. On the petition of the Cumberland Telephone & Telegraph Company.
Q. Was it compiled with by this company according to your knowledge?
A. Yes, sir, fully complied with.
Q. Was there another order subsequently made by the Commission?
A. There was.
Q. On the subject of telephone toll rates?
A. There was.
Q. When was that?
A. This order was originally entered August 6th, 1906; the rates were to have become effective on September 1st, 1906; I should explain in connection with this order, that a rehearing was granted, and therefore the order was not made final until some time in October 1906.
Q. After the order was entered—what is the number of that order.
A. No. 552.
Q. After that order was entered a rehearing was granted, you stated?
A. Yes sir, a rehearing was granted.
Q. At whose request?
A. Upon the request of the Cumberland Telephone & Telegraph Company.
Q. Was a hearing had before the Commission on that rehearing?
521 A. It was.
Q. What was the final decision of the Commission on the rehearing?
A. The rates fixed in this order *was* re-affirmed and the order made effective.
Q. What is the number of that order?
A. I have already stated that, 552.

Offer Mr. M'CALEB: I offer the order in evidence, same being marked for identification "D-3."

Q. Is that the order No. 552 which is in controversy in suit No. 61 in this Court?
A. It is.
Q. Is there a scale on this map which we have offered in evidence, showing the distances?
A. I think there is, but if there is not a scale on this map, I believe it is made on the same basis or plan as the standard map of the

Railroad Commission of Louisiana, which was made a part of the Commission's order No. 488. The Commission requires the Company to use a scale of eight miles to the inch in making up its map in that order, which is the scale used by the Commission in its official maps.

Q. Mr. Barrow, as a general rule, and in view of your experience in making rates, what effect has a general reduction of rates upon the gross revenues of corporations giving service to the public.

Objection Mr. GRANBERY: Counsel for Plaintiff objects to this as irrelevant and immaterial.

A. The effect of a reduction in rates upon the gross revenues would depend upon whether or not the reduction in the rate brought about an increase in the business without increasing the operating expenses. I believe that a reduction in rates of service used generally by the public results in an increase in the business without an
522 increase in the operating expenses. Therefore, it is to be expected that there will be an increase in the gross revenue of the company and in the net earnings of the company.

Q. Would that opinion apply to the business of the Cumberland Telephone & Telegraph Company in this State?

A. I think it would. The opinion would apply to railroads: I think the rule would apply to it.

Q. Now, it has been testified in this case——

A. I wish to add that my opinion is based upon reductions which have been made by the Commission in the past, both on freight and passengers rates on railroads. It is also based upon the general and well known fact, that a reduction in rates for excursions, brings about a large increase of business, and, from what I have heard of the testimony in this case, it is shown that a reduction in the night rate increased very largely the business during certain hours of the night.

Q. Has the reduction in the night rate of the Cumberland Telephone & Telegraph Company, demonstrated a large volume of business for the night, during night time?

A. My knowledge of that company, from the testimony which I heard in this case, I should say yes.

Q. Now Mr. Barrow, it has been testified in this case by one or two of the witnesses, that they are of opinion that the reduction involved in Order No. 552, would amount to a loss of the groos revenue of about $40,000 a year. Did you hear that testimony?

A. I did.

Q. Did you also hear that that testimony was based upon the toll receipts for the month of June 1906?

A. That is my recollection of it.

Q. Mr. Barrow, according to my recollection, Mr. Caldwell testified that if the night rates under order 552 was made the same as the day rates, instead of the reduction being $40,000, the reduction of revenue would be considerably less, but not as much as $10,000.00 less; is that correct?

523 A. Substantially, that is the way I remember it.

Q. In other words about $30,000?

A. About $30,000 loss of revenue instead of $40,000 if the night rates in 552 were increased to the day rates.

Q. If the night rates under Order 552 are made the same as the day rates, what in your opinion would be the difference—or what difference would it make in the revenues of the company?

A. I have formed an opinion on that, based upon the testimony of Mr. Caldwell, in which he stated that the increased revenue to the company under the decreased night rates as they are at present would be about $40,000. I have made this opinion upon the basis that $40,000 is only fifteen per cent. and a slight fraction over the company's earnings in the State of Louisiana.

Q. You mean net earnings?

A. Yes sir, net earnings in the State of Louisiana. I have got a statement which I can give you the exact figures. The night rates in the Commission's order No. 552 are not fifty per cent. of the day rates, but are only about twenty-five per cent. of the day rates on an average for the reason that there is a minimum charge fixed on the short distance, which in several cases, is as much as the day rates. Therefore, I think that the Company, under the Commission's order No. 552 would gain at least $20,000 additional revenue by increasing the night rates to the day rates, making the net reduction if the night rates in 552 were increased to the day rates, $20,000 instead of $40,000.

Q. Is that reduction or estimate of reduction, based upon the whole reduction testified to by Mr. Caldwell at $40,000?

A. Yes sir.

Q. Mr. Barrow it has been testified to that the cost of bringing material into the State of Louisiana is greater than in other sections of the country in which the Cumberland Telephone & Telegraph Company operates. Do you recollect that testimony?

524 A. Yes, sir, and I have made some examinations to either substantiate or deny this statement, and I have compared some statements made upon from tariffs on file in the City of New Orleans in the office of the L. & N. Railroad showing the rates to several important points in the States of Mississippi, Louisiana, Alabama and Tennessee.

Judge GUION:

Q. Rates on what?

A. Electrical material and such material used in constructing telephone lines and exchange.

Mr. M'CALEB:

Q. I show you a statement, marked D-4, and ask you from what source you obtained those figures?

A. The rates shown in these statements were obtained by me from the office in New Orleans of the L. & N. Railroad.

Q. What is the result in the cost of transportation from the points named there to New Orleans, as compared to the cost of transporta-

tion to other points in the country in which the Cumberland Telephone & Telegraph Company operates its lines?

A. Why New Orleans enjoys lower rates than almost any other interior town in the Southern territory. The rates shown on this statement are so arranged as to show the rate from New York, Philadelphia, Baltimore, and Boston to New Orleans, and also the following towns and cities to Nashville, Tennessee: To Meridian, Miss.; Jackson, Miss.: Montgomery, Alabama. The rates to Nashville, Tenn., are lower than the rates to New Orleans. The rates to Meridian Mississippi are higher on all classes of telephone material used on inside construction.—a higher class of telephone material, than to Meridian, Miss. The rates to Jackson, Miss., from the points named are considerably higher than the rates to New Orleans on all classes of material used in telephone construction, and the rates to Montgomery, Ala.. are also, much higher than the rates to New
525 Orleans. New Orleans, being a water-competition point, enjoys lower rates than any interior town in the Southern territory from these same points. I wish to say also that the rates named in this tariff—in the tariffs which I examined with but very few exceptions, apply also to Baton Rouge, La., and also to Morgan City; these are what are known as Common points.

Q. Why have you selected New York, Philadelphia, Baltimore and Boston in estimating the rates from those points to New Orleans and Louisiana points?

A. I have not used any other points. I have used points in other states: I selected these cities because they are large central markets where telephone material can be bought in large quantities.

Q. You have stated that the rates from these points to Nashville is lower than from these points to New Orleans. If the material were shipped from Nashville to New Orleans, after it had been shipped from these points to Nashville, would the total rate, passing through from these points,—these central points—to Nashville on to to New Orleans, be higher or lower?

A. I couldn't answer that question definitely, because I made no examination of local rates from New Orleans—from Nashville to New Orleans. My opinion is it would be considerably higher.

Q. The compensation for the rate to Nashville, plus the rate from Nashville to New Orleans, would be considerably higher?

A. Than the local rates. I wish to add to my statement that the local rates in the State of Louisiana out from New Orleans, are comparatively speaking lower for the same relative distance, than in other states where there is no water competition. I know this by having made comparisons in New Orleans by boat and rail with rates in all the Southern States—with all classes in the Southern and Western classification.

Q. Mr. Barrow is the expense of the transportation of telephone poles from points where the Cumberland Telephone & Tele-
526 graph Co. purchase their poles, greater or less than from any other point?

A. I don't know; I can't answer that question. I don't know from what point the Cumberland Telephone Co., purchased its poles,

but if they purchase them from the section in which pine lumber is plentiful, I should say that the rates of transportation are arranged so that they get that class of transportation very cheap; and where they use creosoted poles, there is a stoppage in transit, which allows shippers to stop the poles and creosote them at a very small extra cost.

Q. Do you know from what point the Cumberland Telephone Co. gets its creosoted poles?

A. I do not. I wish to say, in connection with that answer, that the Commission has received a letter from parties living in Tangipahoa Parish, stating that the Cumberland Telephone Company had made contracts for large numbers of telephone poles in that parish, and that they had advised them that unless this rate put in by the Commission, in order No. 552 was abandoned by the Commission they would cancel these contracts. I therefore conclude that they got some of these telephone poles from the parish of Tangipahoa which is a pine section.

Q. Does the Railroad Commission require of public service corpor-tions, such as railroads and telephone and telegraph companies, an annual report?

A. It does, and prescribed the form on which these reports shall be made.

Q. Has the Cumberland Telephone & Telegraph Co. furnished the Railroad Commission annual reports under these requirements?

A. It has.

Q. When was the first annual report of the Cumberland Telephone & Telegraph Co. furnished the Commission?

527 A. It was furnished sometime in the Summer of 1899 for the year ending June 30, 1899.

Q. Have you the annual report for that year?

A. I have it; I have not got it here, and I will state why I didn't file that: Because the annual report for that year was made on an entirely different form or basis from the annual report they were required to furnish after the year 1903. The Commission's form was not in consistency with the system of accounting used by the Telephone Company, and the results therefore were not accurate.

Q. I show you an annual report of the Cumberland Telephone & Telegraph Co. to the Railroad Commission of Louisiana, for the year ending June 30, 1904, and ask you if that is the original report furnished by that company?

A. Yes sir, this is the original report furnished to the Commission by the Cumberland Telephone & Telegraph Company for the year ending June 30, 1904.

Q. That is, for the year commencing the first of July 1903, and ending June 30, 1904?

A. Yes sir.

Offer Mr. M'CALEB: In connection with the testimony of the witness, I offer in evidence the original report, marked for identification "D-5," and ask leave to furnish a certified copy of that report; but with the understanding that, if the original is required the original will be produced the original will remain in the record.

Q. I next show you the annual report of the Cumberland Telephone & Telegraph Co. to the Railroad Commission for the year ending June 30, 1905, and ask you if that is the original report furnished by that Co.?

A. This is the original report furnished to the Railroad Commission by the Cumberland Telephone & Telegraph Co., for the year ending June 30, 1905.

Offer Mr. M'CALEB: I offer that report in evidence in con-
528 nection with the testimony of the witness, marked for identification "D-6."

Q. I now show you the annual report of the Cumberland Telephone & Telegraph Co., for the year ending June 30, 1906, and ask you if that is an original report?

A. This is the original report furnished by the Cumberland Telephone Co. to the Railroad Commission of Louisiana for the year ending June 30, 1906.

Offer Mr. M'CALEB: I offer that report in evidence.

WITNESS: I understand it has been offered.

Mr. M'CALEB: Certain parts were offered; I now re-offer it in connection with the testimony of Mr. Barrow, same being marked "D-7."

Q. Have you made a statement showing the ratio of each item of expense in Louisiana, the total expenses in accordance with the report ending June 30, 1906?

A. I have; it also shows the ratio of each item of expense to the total gross earnings in the State.

Q. Is this the statement?

A. It is.

Offer Mr. M'CALEB: I offer the statement in evidence in connection with the testimony of the witness, marked "D-8."

Q. From what report, document or source did you make that statement?

A. From the annual report of the Cumberland Telephone & Telegraph Co., to the Railroad Commission of Louisana, for the year ending June 30, 1906.

Q. Did you make a like statement for the year ending 1905?

A. I did.

Q. I show you statement marked "D-9," is that the state-
529 ment made from the annual report for that year?

A. It is from the annual report of the Cumberland Telephone Co.

Offer Mr. M'CALEB: I offer that statement in evidence being marked "D-9."

Q. Have you made a statement for the year 1904?

A. I have.

Q. Please look at this statement.—"*d*-10." Is that a like statement for the year ending 1904?

A. Yes sir; same being marked "*d*-10."

Q. From what source was it made?
A. This statement was made up from the figures shown in the annual report of the Cumberland Telephone Co. to the Railroad Commission for the year ending June 30, 1904.

Offer Mr. M'CALEB: I offer that statement in evidence in connection with the testimony of the witness, marked for identification "D-10."

Q. I want ask you one question relative to the rates from Chicago—the cost of transportation from Chicago on Electrical and telephone material; have you made a statement of those rates?
A. I did make a statement of those rates, but was afterwards advised by the general freight agent that the tariff which he had furnished me had been amended, and I expect to get from the assistant general freight agent an amended tariff and will prepare and file such a statement.
Q. Will you have it prepared and filed and marked "*d*-11"?
A. I will.

Mr. M'CALEB: When produced, I will offer it in evidence.

Judge GUION:

Q. There has been no report filed for the year ending June 30, 1907, yet?
A. No sir.

530 Mr. M'CALEB:

Q. When is that report due Mr. Barrow?
A. September 15th.

Judge GUION:

Q. When you say "due," you mean under the rules of the Commission?
A. Yes sir.

Mr. M'CALEB:

Q. Have you prepared a comparative statement of the earnings and expenses of the Cumberland Telephone & Telegraph Co., in the State of Louisiana for the year 1904, 1905, and 1906, as shown by the annual reports and sworn statements of said Company furnished to the Railroad Commission?
A. I have.
Q. Is this the statement?
A. Yes sir.

Offer Mr. M'CALEB: I offer in connection with the testimony of the witness document marked D-12, identified by the witness.

Q. Have you made a statement of dividends declared and paid on stock appportioned to Louisiana for the years as shown by the annual statements heretofore filed and offered in evidence?
A. Yes sir.
Q. Is this the statement?
A. It is.

Offer Mr. M'CALEB: I offer it in evidence being marked for identification "*d*-13."

Q. Have you prepared a statement of the value of the property in Louisiana as shown by these annual reports furnished the Railroad commission for the years 1904, 1905 and 1906?

A. I have.

Q. Is this the statement "D-14"?

A. It is.

Offer Mr. M'CALEB: I offer that statement in evidence, identified as above.

531 Q. Have you prepared a statement showing the total expenses derived from the annual reports for the years 1904, 1905, and 1906, including the amount for depreciation?

A. Yes sir.

Q. I show you the statement and ask you to identify it?

A. That is correct.

Offer Mr. M'CALEB: I offer the document in evidence, being marked "D-15."

Q. Have you prepared a statement of the total gross earnings in Louisiana for the year ending June 30, 1904, 1905, and 1906, respectively.

A. Yes sir.

Q. Is this the statement?

A. It is, it is marked "D-16."

Offer Mr. M'CALEB: I offer the statement in evidence marked D-16.

Q. Have you prepared a statement of the net earnings of the Company for Louisiana as shown by these annual reports for the years 1904, 1905 and 1906 respectively including the item for depreciation, operating expenses?

A. Yes sir.

Q. Is this the statement?

A. This is the same statement you have already filed; it is a carbon copy (whereupon same was withdrawn).

Q. Have you prepared a statement of the capitol stock of the telephone Co. for the year 1904, 1905 and 1906, derived from the annual reports of the Cumberland Tel. & Tel. Co. to the Railroad Commission?

A. I have.

Q. Is this the statement?

A. It is. Same being marked "D-17."

Offer Mr. M'CALEB: I offer it in evidence.

Q. Mr. Barrow from these annual reports take for instance for the year 1905. After deducting the dividend from the net earnings was a surplus shown, after paying this dividend and all other deductions including depreciation and bad debts?

532 A. Yes sir, after paying dividends and all deductions, including depreciation and bad debts, there was still a surplus shown.

Q. What does that amount to?

A. $68,175.39 for the year ending June 30, 1905.

Q. And for the year ending 1906?

A. There was also a surplus shown after deducting dividends and depreciation, bad debts, maintenance and all other deductions from income of $72,359.07.

Q. Are these amounts shown by the annual reports made to the Commission for those years?

A. They are not shown in the annual reports as I have stated them; but they are the result obtained from the figures shown in the annual reports.

Q. Have you made a ratio of operating expenses to the total gross earning not deducting depreciation?

A. I have made some figures showing, that, yes sir.

Q. Is it shown in these statements heretofore filed?

A. No, all the statements heretofore filed show the ratio of each item of expense to operating expenses, including depreciation and bad debts.

Q. Did you make a statement of the ratio of operating expenses to total gross earnings, not including depreciation?

A. I didn't prepare a statement to be filed; I made some figures, I do not recall what they are: I could produce them.

Q. You made a memorandum of them?

A. I think so, yes sir.

Q. Please look at this memorandum and say if that is it?

A. That is only for one year, 1904.

Q. You have not made it for the three years?

A. I have made it, but I have not filed it, and I do not recollect what the figures are.

Q. Mr. Barrow, have you seen the April, May, and June statement, purporting to have been issued by the Cumberland Telephone & Telegraph Co., which I show you?

A. I have.

533 Offer Mr. M'CALEB: I offer these statements in evidence same being marked respectively "*d*-18," "D-19" and "D-20."

Q. Mr. Barrow, I show you copy of the general balance sheet of the Cumberland Telephone Co., for its entire line for the year--ending June 30, 1904, 1905 and 1906, respectively. Can you tell me from where those statements have been prepared.

A. These have been taken from the annual reports of the Cumberland Telephone Co. to the Railroad Commission of Louisiana. for the years ending June 30, 1904, 1905, and 1906, and are exact copies.

Offer Mr. M'CALEB: I offer the statements in evidence, marked D-21, D-22 and D-23.

Cross-examination.

By Mr. GRANBERY:

Q. Mr. Barrow you testified that one of your duties was to recommend rates to the Commission: Does the Commission always accept your recommendations?

A. I didn't say my duties were to recommend rates; I said to make recommendations. No sir, they do not always accept my recommendations.

Q. Referring to the map showing the telephone lines throughout the State of Louisiana, do you know who put the letters and information upon the map written in black ink?

A. It was received that way in our office. It was on there when the map came; I don't know who put it on.

Q. Did it come from the office of the Telephone Co., directly to you?

A. Yes sir.

Q. Don't you know that the American Telephone & Telegraph Co., has no pole routes in Louisiana?

A. No sir; I do not know that. I know that they state in their annual returns some pole lines; I do not know where they are located.

Q. How much do they return to you?

A. They only return 6.18 miles.

534 Q. Has it not been stated to you and is it not a fact that the pole route on the map offered in evidence with your deposition, marked A. T. & T. Co., is owned by the plaintiff company from New Orleans to the Rigolets?

A. No such statement has ever been made to my that I recollect.

Q. You treated it as the Cumberland's line, have you not?

A. Yes sir.

Q. The other line, also, marked Postal Co.

A. Yes sir.

Q. Has it not been stated to you, and do you not know it to be a fact, that that is a joint pole route?

A. It has not been stated to me and I do not know that to be a fact. My investigation- as I stated on my direct examination, were based entirely on what was written on this map, which was sent to the Railroad Commission.

Q. Mr. Barrow, do you mean to be understood as testifying that there were no telephone pole lines rates authorized by the Commission, prior to December, 1905?

A. No, and I did not so state. I said that this was the first order issued by the Commission fixing toll rates.

Q. Under what basis, or how were the rates fixed prior to that time?

A. The Cumberland Co. simply notified the Commission that they were charging certain rates for toll lines, the Commission would make up for each toll station a tariff. There was no fixed basis for arriving at the exact rates to be charged in all cases. That was one reason why this order 488 was put into effect.

Q. Was not the order of December 1905 brought about in view of the fact that the Company desired to put into effect the square or centre rate instead of having a special rate between each company branch in the state?

A. That was one of the reasons given by the Company for wishing to put this into effect; but the principal reason actuating

535 the commission was in order to get a stable basis for making rates in the State of Louisiana.

Q. You know that from the time Commission commenced business in Louisiana in 1898 until December 1905, there were no tariffs by the Commission as to the rates that should be charged for telephone toll service?

A. Practically.

Q. When the commission adopted the rates of December 1905, did it make any change in the rates to be charged by the company?

A. They adopted the rates submitted by the Company. There were changes made in the rates previously charged by the adoption of this order.

Q. The only change brought about was simply a change from the special rates charged to the square or company rate?

A. It made increases and reductions.

Q. The Commission did not think that they were authorizing any increase in telephone rates, did they?

A. They knew they were in some cases.

Q. And knew in others that they were getting reductions?

A. Yes sir. authorized reductions.

Q. So, that, as a sum total. they did not consider that the telephone rates were being increased?

A. They considered that the arrangement suggested by the company was a fair one, because it put the people on an equal basis for equal distances. The rates before were arranged without regard to distance.

Q. Were not the rates before that, bases on air mileage?

A. In some cases.

Q. Was not that true in all cases beyond 20 miles?

A. I think that was true.

Q. In the schedule adopted by the Commission, didn't they increase the whole mileage basis under 20 miles?

A. They did.

Q. How long did the Commission hold under advisement the adoption of the rates proposed by the company in December, 1905?

536 A. About a year probably; I could not give you the exact figures; I have not got that in my mind.

Q. Mr. Barrow, the statement showing the value of the company's property in Louisiana, attached as exhibit to your depositions, shows a very heavy net per cent. of profits on those valuations, do they not?

A. Yes sir.

Q. In fixing the tariff of charges in August, 1906, which finally became effective in October, 1906, and I believe is order No. 552 did the Commission base its tariff of rates on the reports of the company which are annexed to the deposition, or upon the statement of the company filed at that time in response to the order of the Commission for the company to appear and show cause why its rates should not be decreased?

A. They took into consideration both the statement presented by the Company and the statements previously filed. The item which had the most weight in causing them to reach the conclusion that

the rates then charged were unreasonable, was the earnings and operating expenses and the net earnings, as shown by those reports made to the Commission.

Q. As shown by the annual reports?

A. Yes sir. by the annual reports. I will say this: That the statement filed by the Company at the hearing, corresponded in every particular with the earnings and operating expenses as shown on those annual reports to the Commission.

Q. You are aware of the fact that the taxing authorities, adopted a basis of valuation on telephone property by whole mileage copper and wire mileage and exchange subscribers, are you not?

A. Why no I can't say that I am aware that they adopted anything more than a basis for arriving at valuations on toll lines and wire mileage. I do not know anything of how they arrived at the valuation of exchanges.

Q. Those annual statements to your commission, corresponded with the statements filed with the taxing authorities?

A. Not in all particulars.

537 Q. In what respects do they differ?

A. The valuations at different exchanges varies largely.

Q. Does not the sum total correspond or average?

A. It does for some years; I can't tell you; I could furnish a statement of the exact differences.

Q. Is it material?

A. Well it amounts to—I think it is material in some years.

Q. I am speaking of 1904, 1905 and 1906?

A. I think the statement which I can file would be the best answer to that question. I wouldn't like to say, because I do not remember the exact figures, but there is a difference.

Q. Is there a difference for the years I have mentioned?

A. There is a difference for every year I have examined.

Q. Are the statements filed with you to cover the same period of time, or rather for the year ending at the same time?

A. If you will let me examine them, I have one of those statements here. (Witness examined document.) No the statements do not show.

Q. Is it not a fact that the tax year ends December 31st, and the reports filed by your Commission end June 30th of each year?

Q. The reports required by our commission end June 30th, of each year, I don't know when the tax year ends.

Q. As a citizen and with your familiarity with affairs in Louisiana and especially at Baton Rouge, are you not able to say that reports filed by corporations at Baton Rouge for the year, end December 31st?

A. I can't say that is true in all cases, because I know of corporations filing duplicates that they filed with the Railroad Commission, with the Board of Appraisers, and in order to file a duplicate they would have to file it for the year ending June 30th, previous to January 1st, with the assessors when the assessment was to be made.

Q. What time during the year does the tax board meet.

A. In the Spring.

538 Q. You do know, as a fact, that the railroad companies file the same statement with the railroad commission that they file with the taxing authorities?

A. I know that to be true with the large systems of the state whose reports I have examined.

Q. Did you examine their reports in the taxing authorities office?

A. I examined every report to the Board of Appraisers for the purpose of finding out whether they made the same report to them as they did to the Railroad Commission.

Q. Did you examine the report of the plaintiff company for the same purpose?

A. I did.

Q. Is it not a fact that the railroad companies who file reports with you. adopt the figures so far as valuation is concerned, fixed by the taxing authorities for the preceeding year?

A. In the report made to the railroad commission we require no figures which are fixed by the taxing authorities——

Q. What I asked you was whether or not you had any information as to whether or not the railroad companies or any of them in their statements filed with you, adopt the valuation fixed by the taxing authorities for the preceding year?

A. I can't answer that question yes or no, because our reports are not anything like that which the Board of Appraisers receive; they are two different forms, and *they* may be some elements which enter into that report which may not enter into our report. So far as railroad accounts is concerned, we use a different form.

Q. I am only asking you about the one item of valuation of property in Louisiana?

A. I think the reports made to the Railroad Commission is the basis of the report made to the Board of Appraisers.

Q. It is the same report—the figures are the same?

539 A. The figures for the same items are the same.

Q. And do they not adopt each of the figures adopted in that respect adopted by the taxing authorities for the preceding year?

A. No sir, there is nothing in our report to show any figures adopted by the taxing authorities.

Q. What I wish to know, Mr. Barrow—a Railroad Co., is taxed in Louisiana for the year 1905 on a basis of $3,000,000.00 of valuation. In the statement filed with your commission in the year 1906, does not that railroad company show the valuation of its property in Louisiana at $3,000,000.00?

A. It does not.

Q. They don't use those figures at all?

A. No sir.

Q. What figures do they use?

A. They use the actual cost of the tracks, road bed and equipment in the State of Louisiana and they show the capitol stock invested in the State. In fact their report returned to us, is a report contain-

ing actual figures showing the cost of the line in the State of Louisiana.

Q. You know, as a matter of fact, that property in Louisiana is not assessed its full value?

A. You mean its market value?

Q. Its actual value?

A. Not exactly its actual market value.

Q. It is appreciably less?

A. Yes sir, I think so; I am speaking generally of all property in the State of Louisiana.

Q. You have observed, have you not, that the property of the plaintiff company has been assessed at the value fixed in these reports up to the year 1907?

A. Yes sir, that is practically true.

Q. So that the valuation as returned to your board or your commission by the plaintiff Company, follows the value placed upon its property by the taxing authorities of the State?

540 A. Yes sir, that is true.

Q. You knew, did you not, Mr. Barrow, that the valuation in these reports of the plaintiff's property in the State of Louisiana was not its real value?

A. I thought it was not.

Q. In fixing a schedule of rates, the Commission did not adopt that valuation as a basis did it?

A. No sir.

Q. Order No. 552, which is the order adopted in the Fall of 1906, that reduced the toll line rates, came about in this way, did it not? An order was entered, directing the plaintiff company to appear at the next meeting of the Commission and show cause why its toll rates should not be reduced. At that hearing the company presented a financial statement identical with the exhibit to the deposition of H. B. Smith covering the period from July 1, 1905, to June 30, 1906. The Commission received this report and decided the question the next morning. Is this true?

A. That is correct as far as it goes, but it does not explain the whole cause for the adoption of that order.

Q. What other proof did the Company have before making that order?

A. The Commission in the first place, did not, of its own accord, originate this proceeding against the company.

Q. Excuse me. I am asking you only for the proof?

A. The proof that the company was making what they considered unreasonable earnings by the annual report made by the company for the year- 1904, 1905 and 1906, and the statement filed with them by the counsel for the company when the hearing was had.

Q. No proof was offered to the Commission in the presence of any one representing the plaintiff company other than the statement of receipts and disbursements for the year ending June 30, 1906, was there?

A. No sir.

Q. How many sessions are held by the Commission annually?

A. There is no fixed number. As many as are necessary to transact their business.

541 Q. How many has the Commission held for the year ending June 30 1907?

A. I could only answer that by referring to the records.

Q. How many would you say?

A. Including special sessions, about fifteen.

Q. How long a duration were these sessions?

A. These sessions last anywhere from 24 hours to a week.

Q. Do the majority of them last 24 hours or a week?

A. The majority of them last three or four days.

Q. How many order- would you say the Commission had made for that year?

A. The Commission's annual report is made up for the calendar year and I can't give you the exact number for any period; I would have to refer to the record. I should say something over 100 orders. I can give you the exact figures and will furnish them.

Q. The Commission is composed of three members?

A. Yes sir.

Q. Living in different parts of the State of Louisiana?

A. Yes sir.

Q. You remain in the office of the company, practically your entire time?

A. Yes sir. I wish to add that while it is true that the Commission is not continuously in session, that when cases of importance arise, they separately take the record with them and arrive at conclusions often when the Commission is not in session.

Q. That was not the course pursued in the order No. 552?

A. In this order No. 552 the question had been under consideration for several months before the summons was issued to the company, and I made up statements showing the differences in the rates which would take place if the Commission put that order into effect, and sent them to each Commissioner; they were all furnished with extracts of the annual reports, such as filed in this case, and had them in their possession for several months.

542 Q. You have stated as I understood you that it has been your observation that since you have been secretary of the Commission, that the reduction in passenger or freight rates, increased the earnings of the carrier, without increasing the expense is that correct?

A. Yes sir, that is correct.

Q. Has the Railroad Commission of Louisiana ever decreased a passenger rate?

A. Yes sir.

Q. When?

A. We have in the last year, decreased the passenger rates on the Southern Pacific on branch lines of the Southern Pacific in all cases, to three cents. They formerly charged from three to six cents according to the length of the line. We also reduced the rates on several other short lines in the State of Louisiana.

Q. And it has been your observation in each of these cases, that the reduction increased the receipts without any increase in the expenses?

A. Yes sir, that is shown by statements made to the Commission.

Q. Is that conceded by the Southern Pacific?

A. I never heard it denied by them; the operating expenses do not necessarily have to be increased because the passenger rate is decreased. They have not been required to operate any more trains or to furnish any more service.

Q. Was it upon this idea that the Railroad Commission felt that a reduction in the toll rates of the plaintiff Company?

A. Not entirely; they naturally thought that that would be one of the results of the reduction.

Q. The tariff for freight in Louisiana as fixed by your commission, permits the railroad companies to charge car load rates for less than a car load of freight, is that not a fact?

A. No sir, that is not correct, if I understand your question.

543 Q. What I mean is this: That if a shipper should offer a railroad for transportation something that would take a car, the railroad company is authorized to charge car load rates—a minimum car-load rate whether that car be full or partially full?

A. No sir, that is not permitted by the Commission.

Q. In the shipment of railroad poles do you know as a matter of fact that in Louisiana the telephone Company is required to pay the minimum car load rate if they only ship one pole?

A. If they do that it is a violation of the rules and regulations of the Commission. There is no rule by the Railroad Commission which allows any railroad company to charge for more than the actual rate *or* less than a car-load shipment, except in case where the shipment is of such a bulky nature as to require an entire car for its transportation; it is then charged at a minimum weight.

Q. You are familiar with the map exhibited showing the lines, toll rates and exchanges of the plaintiff Company in Louisiana. I will ask you to state whether or not, many of those exchanges are at points where there is water competition with railroads?

A. Yes sir, a great many of them.

Q. Please name them?

A. New Orleans, Lutcher, Donaldsonville, Napoleonville, Thibodaux, Houma, Morgan City, Berwick, Lake Charles, Shreveport, Monroe, Alexandria, Baton Rouge, Bayou Sara, Melville, White Castle, Natchitoches, Covington, Hammond. These points are all in actual water competition with railroads, and water competition rates prevail.

Q. Are any boats running from New Orleans to each of those points?

A. Not necessarily, but they could be reached by boats and therefore water, competition rates prevail.

544 Q. Do you not require less rates to those points you have mentioned than to those other points equally distanced from New Orleans on account of the fact that there is water transportation?

A. At every point to which I have mentioned the rates are lower than rates to interior points, on account of the water competition.

Q. Are they materially lower?

A. In some cases materially lower.

Q. On an average, what would you say would be the percentage of the decrease?

A. I could arrive at an approximate average.

Q. Would it amount to five per cent.?

A. More than that.

Q. Ten per cent.?

A. Ten per cent.? In some cases more than thirty per cent.

Q. And in some cases very much less?

A. No, in all cases where there is water competition shown the rates are materially lower.

Q. Mr. Barrow, do you know whether poles intended for piling and telephones carry the same rate?

A. No I do not remember whether there is a deduction in the rate or not.

Q. I will ask you if it is not a fact that the rates are not as much on piling as it is on telephone poles?

A. I couldn't state that; I could produce the tariffs to show the rates.

Q. There is no material difference between the poles for piling purposes and the telephone poles is there, assuming that they are both creosoted pine poles?

A. I do not know what the difference is.

Q. You know or ought to know the difference?

A. There may be a difference in the value.

Q. Mr. Barrow do you know that the plaintiff company does not buy and set any pine poles, but that it buys the creosoted pine poles from the creosoting works, and not directly from the
545 people who cut them in the woods?

A. I do not know that to be a fact. The only knowledge I have on that point comes from a protest filed by parties living in Tangipahoa, against the adoption of this rate, on the ground that the Cumberland Telephone Co., if the rate went into effect would cancel contracts they had with the people for poles.

Q. Was it not this: That the creosoting works, who had made the contracts stated they could not take them because the Telephone Co., was not setting any poles?

A. It was not so stated to us.

Q. Mr. Barrow did you say that was in the form of a letter or petition?

A. It is a letter.

Q. Will you file it as an exhibit, whatever it is, to your deposition?

A. Yes sir. (The letter here referred to was accordingly produced by the witness and marked "D-24.")

NOTE.—It is agreed that a copy may be attached in lieu of the original.

Redirect examination.

By Mr. M'CALEB:

Q. Mr. Barrow does any of your statements that have been filed show the percentage of net income, as compared with the total valuation of property in Louisiana of the Telephone Co. in the years 1904, 1905 and 1906?

A. As shown in their reports no.

Q. I wish you would make a statement and attach it to your deposition which I offer in evidence showing the percentage of net income as compared to the total valuation of the property and in that statement please include the item for depreciation and bad debts?

A. Yes sir, I will.

Q. Mr. Barrow, in issuing this order No. 552, did or did not the Commission consider the valuation of the Cumberland Tele-
546 phone Company's property, as appears from their annual reports of 1904, 1905, and 1906?

A. Yes sir, the Commission considered the valuation in those reports as well as other detailed figures shown therein.

Q. You have been asked relative to the Commission's sessions, and you have stated that they had about 15 sessions this last year, and that these sessions last as long as from 24 hours to a week, and that they average about four days at times. When the Commission is not in session do they make investigations separately, each Commissioner?

A. Yes sir, that is their policy. I wish to state in explanation simply, that the Commissioners have referred to them all cases arising in their different districts which affect matters of operation of railroads, and these cases require inspection and personal investigation during the interval.

Recross-examination.

By Mr. GRANBERY:

Q. Mr. Barrow the personnel of the Commission was the same from its organization to November 6, 1906?

A. No sir, there was a change made in the Commission in the year of 1902?

Q. Mr. Sims took the place of Mr. Foster?

A. Yes sir.

Q. Who were the Commissioners at the time that the question of rates in Louisiana was determined based on the report of Mr. Wilkinson?

A. C. L. De Fuentes, Chairman, R. L. Sims, and W. L. Foster.

Q. What position if any, has the Chairman been engaged in during the last few years, other than that of railroad commission work?

A. I do not know of any business in which he has been engaged.

Q. What else does he do, or has he done during those years?

A. I don't know of any other business.

547 Q. Do you not know that he has been officially connected with the Cotton Exchange during those years and engaged in certain work for the exchange?

A. He has been connected with the Cotton Exchange, until the year 1906, by being a member: I don't know whether he had any active duties to perform in his capacity as member.

Q. What business was Mr. Foster engaged in during the time he was on the Commission?

A. Planting.

Q. What business has Mr. Wade been in since he is on the Commission?

A. He also conducted a farm.

Q. What kind of a farm?

A. General planting, rice farm.

Q. Then he has been engaged in the production of rice?

A. Yes sir, and other agricultural products.

Q. During that time you have not been engaged in any other business, you have given your entire time to it as secretary of the Commission?

A. Yes sir.

Mr. M'CALEB:

Q. You were asked a question relative to Mr. Wilkinson. Who is Mr. Wilkinson?

A. I do not know Mr. Wilkinson personally. He is an expert accountant employed both by the Railroad Commission of Louisiana, and the Cumberland Telephone Co. to make an investigation of that company in the year of 1902, I think with the view of determining the reasonableness of the exchange rates in the City of New Orleans.

Q. Was it in 1902 or 1900?

A. I think it was in 1900—I think so; I am not positive about the date.

548 Q. Was he employed to perform any other duties besides determining the reasonableness of exchange rates?

A. Why that was the matter under consideration by the Commission. He was requested to go to Nashville and make a complete investigation of the Cumberland Telephone Company's business.

Q. Was his employment directed in any manner towards the investigation of toll rates?

A. None whatever, so far as the Commission was concerned.

Q. And that was in the year 1900?

A. About that.

Mr. GRANBERY:

Q. Who was Mr. Wilkinson selected by?

A. I do not know that personally.

Q. Have you any information or belief about it?

A. I think he was selected by Mr. Sims.

Q. In other words he was selected by your side and not in any respect by the Cumberland Telephone Co.?

A. Yes sir, I think he was the choice of both.

Q. Was there not an agreement by which the Commission was to select an expert accountant, the only condition attached being that he should not be a citizen of Tennessee or Louisiana?

A. I do not know anything about that.

Q. Was not Mr. Wilkinson instructed by the Commission to report toll rates in operation in the State of Louisiana, and did he not so report?

A. The instructions to Mr. Wilkinson, so far as I know were not given in writing and I don't know what instructions were given.

Q. When you say he was employed to ascertain the reasonableness of exchange rates and had nothing to do with toll rates, you don't know really what the instructions were?

A. I said the Commission's instructions were to inquire as to the reasonableness of exchange rates.

Q. You do know that he did report as to the entire business in Louisiana?

549 A. Yes sir.

Agreement.—It is agreed that the Stenographer may write out this deposition and sign the witness' name to same and file it for the defendant.

Whereupon the sitting was adjourned until to-morrow morning at 11 o'clock A. M.

SATURDAY, *August* 17*th*, 1907.

W. M. BARROW, witness for Defendant being heretofore sworn and examined, took the stand for further examination.

Direct examination.

By Mr. M'CALEB:

Q. Mr. Barrow you were requested on yesterday to give a statement of the percentage of net earnings to the value of the property of the Cumberland Telephone and Telegraph Co. in Louisiana for the years 1904, 1905, and 1906?

A. I have prepared such a statement and it is as follows—

Q. Is that statement made from the annual reports of the company filed in this case?

A. That statement was made from the figures shown on the annual statement of the Cumberland Telephone Co., filed in this case for the years 1904, 1905 and 1906. I find the percentage of the net earnings, including bad debts and depreciation, to the value of the property in Louisiana as shown in the annual report to the Commission from the Cumberland Telephone & Tel. Co., for the year ending June 30, 1904, eleven and 40/100ths per cent.: for the year ending June 30, 1905, I find the percentage on the same basis to be twenty-one and 56/100ths per cent. and for the year ending June 30, 1906, upon the same basis, I find the percentage to be sixteen and 38/100ths per cent.

550 Cross-examination.

By Mr. GRANBERY:

Q. Mr. Barrow does not the North Louisiana Telephone Co., operate toll lines in Louisiana?
A. Yes sir.
Q. Do you know the extent of their whole mileage.
A. No, I do not know from memory.
Q. It is about 150 or 200 miles it is not?
A. I have no idea at all, I could furnish it.
Q. In looking at their schedule of rates, would you not be able to give an approximate idea of the length of their lines or the extent of their lines?
A. I could not for the reason that I don't know whether this is intended to cover some stations which have not been opened; but they intend to cover this territory.
Q. The paper handed you is a copy of the tariff of that company approved by the Commission in July of this year?
A. It seems to be.
Q. Will you attach it as an exhibit to your deposition?
A. I will but won't swear that it is correct.

Mr. M'CALEB: It is understood my objection goes to this. The document above referred to is marked for identification Tariff IA.

Mr. GRANBERY:

Q. The Commission did approve a schedule of toll rates for that Company in Louisiana this year did it not?
A. Yes sir.
Q. But you do not know whether this is correct or not?
A. I do not.
Q. Have you any reasons to believe it is not correct?
551 A. No, I have not except that I won't attest the correctness of a copy unless I compare it.
Q. Do you know the basis upon which the rates are figured in that schedule of tariffs approved by the commission?
A. No, I had a conversation with the Manager of this Company about that tariff which was issued, and the basis which he used was slightly higher than the basis that was established by the Commission for the Cumberland Telephone & Telegraph Co.
Q. The difference being that this schedule is on a three-fifths of a cent a mile basis, and the Cumberland Telephone Co.'s is one-half a cent? That is the rates now in use by the Cumberland Telephone Co., not the rates adopted by the Commission which is involved in this litigation?
A. I never have agreed that the rates which are used by the Cumberland Telephone Company are one-half cent a mile, because for short distances they were higher than one-half cent a mile.
Q. You know that certain short distances are based on toll mileage, but if beyond 20 miles it is based on air mileage, is it not?
A. Yes sir.

Q. Leaving our distances under twenty miles which is based on toll mileage, state whether or not the schedule of the North Louisiana Company is not based on three-fifths of a cent a mile and the Cumberland Telephone Co.'s rates now in force, based on one-half a cent?

A. I cannot state, that, because I have made no examination of the rates filed by the North Louisiana Co., with the view of determining that question.

Q. Are not the rates charged by the Cumberland Telephone Company under order 488 the one-half cent per mile charge is not charged until distances after 100 miles are passed?

A. The order itself explains that *that*. For instance, between forty and fifty miles, when a conversation is carried on between points 45 miles apart, the rate charged is based on fifty miles;

552 there is only a charge made for every ten miles.

Q. You spoke of having a conversation with the General Manager of the North Louisiana Co. How recent have you had an interview or conversation with him?

A. In regard to these rates, the day they were issued. I do not know the date it was.

Q. Have you had a conversation since?

A. Not with regard——

Q. How recently?

A. On yesterday morning in New Orleans.

Q. Did you have any conversation with him on yesterday morning in New Orleans?

A. Yes sir.

Q. The South Western Telephone Co., operates a telephone line in Louisiana?

A. Yes sir.

Q. The map filed with your deposition showing the toll lines of the various companies operated in Louisiana, is not correct to date?

A. No that is a map of June 30, 1906, as obtained at that time.

Q. It does not purport to show the entire toll mileage of the other companies doing business in Louisiana?

A. No sir, I didn't file it for that purpose. It only purports to show the total mileage of the Cumberland Telephone Co., on June 30, 1906:

Q. Mr. Barrow the line which is designated A. T. & T. Co., on the map filed in evidence is it not a fact that the plaintiff company has filed a schedule of tariffs for points along that line, and does not the Commission deal with the plaintiff company as the operators of that line in Louisiana?

A. Why I can't say that they deal with the plaintiff company as operating the line. They do deal with the plaintiff Company as operating the line between New Orleans and Pearl River along the L. & N. Railroad.

553 Q. You know of no other line along that route?

A. Well, no, the A. T. & T. Co., does not report their mileage.

Q. That line is reported to you by the Telephone Co.?

A. Yes sir, that is mileage for that distance.

Q. That line don't report to you as operating a line from New Orleans to Pearl River where the L. & N. crosses?

A. No sir.

NOTE.—Counsel for Defendant state- that by reason of the short time given the defendant to introduce its testimony and considering that the complainant has had more than Ninety days to prepare and take its testimony, that the witnesses desired by it are all out of the city on account of the Summer season, and that it is impossible to get these witness- to testify on its behalf at this time, and accordingly the defendant is compelled to close its case.

554 Exhibit No. 3. Annual Report of Cumberland Telephone & *Telephone* Company for 1906.

NOTE.—Transmitted in the original with this transcript as per stipulation of Counsel copy of page 621 of this Transcript.

Exhibit No. 1. Attached to the deposition of James E. Caldwell:

NOTE.—Transmitted in the original with this transcript as per stipulation of Counsel copied in the transcript.

Exhibit No. 3. Attached to the deposition of James E. Cladwell:

NOTE.—Transmitted in the original with this transcript as per stipulation of Counsel copied in the transcript.

Annual Report of the Cumberland Telephone & Telegraph Company to the Railroad Commission of Louisiana, together with the affidavit of T. D. Webb, Treasurer of said Company, of date August 18, 1904, before W. H. Baker, Notary Public, County of Davidson, State of Tennessee; Marked D-5.

NOTE.—Transmitted in the original with this transcript as per stipulation of Counsel copied in the transcript.

Annual report of Cumberland Telephone & Telegraph Company to the Railroad Commission of Louisiana, for the year 1905, together with the affidavit of T. D. Webb, before J. C. Symes, Notary Public, for the County of Davidson, State of Tennessee, Marked D-6.

NOTE.—Transmitted in the original with the transcript as per stipulation of Counsel copied in the transcript.

555 April statement for the year 1907, issued by the Cumberland Telephone & Telegraph Co., marked D-19.

NOTE.—Transmitted in the original with the transcript as per stipulation of Counsel copied in the transcript.

Statement for month of May 1907, marked D-18.

NOTE.—Transmitted in the original with this transcript as per stipulation of Counsel copied in the transcript.

Statement for the month of June, 1907, marked D-20.

NOTE.—Transmitted in the original with the transcript as per stipulation of Counsel copied in the transcript.

556 EXHIBIT MARKED D 2. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Railroad Commission of Louisiana.

Order No. 488.

No. 430.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, *ex Parte.*

Telephone Toll Rates.

Heard April 8, 1904.

The petition of plaintiffs ask that the Commission authorize a standard system of charges for toll line service between points in Louisiana. The system proposed, briefly, is as follows:

Each parish is designated as a "Square," and every parish site is taken as its center, or rate basing point. Toll rates between telephone stations in the same parish, or between stations in adjoining parishes are to be determined by actual measurements from station to station up to 20 miles. Toll rates between all stations in the same parish, and all stations in another parish not adjacent to or bordering on the parish in which the first station is located, are to be determined by the air line distance between the two parish sites, or "Square centers." Between points in the same parish, or between points in bordering parishes, the rates are to be based on the shortest toll line mileage, up to twenty miles. Where the distance between such stations exceeds twenty miles, then the air line schedule shall become effective.

The Commission now has no systematic method of figuring or checking toll line rates, and believes the system proposed is a simple and satisfactory plan, easily understood by the public and the employees of the Company, and that its adoption will result in more uniform charges than exist at present. The changes which will result in present toll line rates are small, and while there will be some slight increases there will be as many or more reductions to offset them.

557 Believing the adoption of the "Square" rate system for figuring toll rates will be of benefit to the public, it is ordered, that—

1. For rates for Long Distance Telephone conversations of three

minutes' duration or less, from one mile to twenty miles, measurements will be made according to pole line mileage, and the rates will be as follows:

From one to seven miles, inclusive..... 10 cents.
Over seven to fifteen miles, inclusive..... 15 cents.
Over fifteen to twenty miles, inclusive..... 20 cents.

2. For rates for Long Distance telephone conversations of three minutes' duration or less, between points in the same parish or adjoining parishes, over twenty miles pole line mileage apart, the measurements shall be made according to the air line distance, between stations. In all towns or cities where there are telephone exchanges, said exchanges shall be considered stations.

3. For rates for Long Distance Conversations of three minutes' duration or less, between points in any parish to points in any other parish, not bounding same, measurements shall be made according to air line distance from parish site to parish site.

Rates based upon air line measurements shall be computed as follows:

One mile to forty miles, inclusive..... 25 cents.
Over forty miles to fifty miles, inclusive..... 30 cents.
Over fifty miles to sixty miles, inclusive..... 35 cents.
Over sixty miles to seventy miles, inclusive..... 40 cents.
Over seventy miles to eighty miles, inclusive..... 45 cents.
Over eighty miles to 100 miles, inclusive..... 50 cents.
Over 100 miles to 110 miles, inclusive..... 55 cents.

From one hundred miles and over the rate is one half cent per mile, air line measurement; the rate increasing five cents for every ten miles or fraction thereof. For example:

If the distance is 102 miles, the rate is 55 cents.

For conversations longer than three minutes, the charges for each extra minute shall not exceed 1/3 of the three minute rate.

4. Stations located in the extreme southern part of Plaquemines Parish on what is known as the Port Eads Line will continue to use rates already authorized. For convenience's sake these stations will each be given a Square number and the rates quoted to all other stations are to be in conformity with the rates between these stations and New Orleans, Louisiana.

5. Night conversation rates are in effect from 6 P. M., to 6 A. M.

558 Where the day rate is 10 cents the night rate will be 10 cents.
Where the day rate is 15 cents the night rate will be 15 cents.
Where the day rate is 20 cents the night rate will be 20 cents.
Where the day rate is 25 cents the night rate will be 20 cents.
Where the day rate is 30 cents the night rate will be 20 cents.
Where the day rate is 35 cents the night rate will be 20 cents.
Where the day rate is 40 cents the night rate will be 20 cents.
Where the day rate is 45 cents the night rate will be 25 cents.
Where the day rate is 50 cents the night rate will be 25 cents.
Where the day rate is 55 cents the night rate will be 30 cents.
Where the day rate is 60 cents the night rate will be 30 cents.

When the day rate is 50 cents or more, the night rate is one-half of the day rate. When the half rate does not end in 0 or 5, the amount is carried up to the next 0 or 5, for example

When the rate is 55 cents, the night rate is 30 cents.

6. Sunday rates are the same as night rates.

7. The official map of the Railroad Commission of Louisiana is to be used as the standard map for measuring distances between square centers, and all calculations for rates shall be based upon the Commission's map.

8. All rates or orders in conflict with the rates named in this order will be revoked when this order becomes effective.

Effective January 1, 1906.

By order of the Commission.

Baton Rouge, Louisiana, December 13, 1905.

C. L. DE FUENTES, *Chairman,*
W. L. FOSTER,
OVERTON CADE,
Commissioners.

[SEAL.] W. M. BARROW, *Secretary.*

I, W. M. Barrow, Secretary of the Railroad Commission of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of Order No. 488, issued by the Railroad Commission of Louisiana, December 13, 1905.

Given under my official signature and the seal of the Rail- Commission of Louisiana this 15th day of August, 1907.

(Signed) W. M. BARROW.

559 EXHIBIT MARKED D 3. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

No. 13473 (Consolidated).

United States Circuit Court, Eastern District of Louisiana.

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Railroad Commission of Louisiana.

Order No. 552.

No. 642.

RAILROAD COMMISSION OF LOUISIANA
vs.
CUMBERLAND TELEPHONE & TELEGRAPH COMPANY.

Telephone Toll Rates.

Filed June 18, 1906. Heard August 6, 1906.

Upon numerous complaints being made to the Commission against the charges made by the Cumberland Telephone & Telegraph Com-

pany in regard to the rates for long distance conversations between points in the State of Louisiana, the Commission instituted this proceeding, and accordingly a hearing was had at Baton Rouge, Louisiana, on August 6, 1906.

The Commission has fully investigated the charges made by the said Company, and believes they are unnecessarily high and excessive, and at the hearing the Company failed to show any good reason why the reductions proposed by the Commission shall not be made.

The Commission finds it necessary, however, to re-arrange the rates proposed by it in the order, and in accordance with its conclusions, it is hereby—

Ordered, That the following rates for long distance conversations between points in the State of Louisiana be and are hereby established:

For long distance telephone conversations between stations not over twenty miles apart, via the nearest pole line mileage, the measurements shall be made according to such pole line route and the following rates shall be charged:

From 1 to 10 miles, inclusive	10 cents.
Over 10 to 15 miles, inclusive	15 cents.
Over 15 to 20 miles, inclusive	20 cents.

560 When the distance between any two points exceeds twenty miles, according to the shortest pole line route, the measurements between said stations shall be made according to the air line distance, and the charges for a three minute conversation between such stations shall be:

From 1 to 10 miles	10 cents.
Over 10 to 15 miles	10 cents.
Over 15 to 40 miles	20 cents.
Over 40 to 50 miles	25 cents.
Over 50 to 60 miles	30 cents.
Over 60 to 70 miles	35 cents.
Over 70 to 80 miles	40 cents.
Over 80 to 100 miles	45 cents.
Over 100 miles	½ cent per mile.

In computing rates between points in different parishes which do not join each other, the parish site will be used as the basing point, and the rates between all points in such parishes shall be the same as the rate between the two county seats. Each parish shall be called a "Square" and given a number, for greater convenience in computing rates. The air line distances shall be used in computing such rates.

For distances over 100 miles, the actual rate shall be charged, except that whenever a rate does not end in "naught" or "five," the nearest figure so ending shall be the correct rate to be charged.

For conversation lasting longer than three minutes, the rate for each additional minute shall not exceed one-third of the rate for three minutes.

Port Eads Line.

On account of the extra hazard*uos* conditions under which the "Port Eads Line" is maintained and operated, an exception is made to the rates applying to the stations "Fort St. Philip," "Neptune," "Quarantine," and "Port Eads or Pilot," and the charge for three minutes' conversations to these stations will be the rate to New Orleans, added to the rates authorized by this Commission to the stations named.

The rate for three minute conversations on Sundays, and between the hours of 6 p. m., and 6 a. m., daily, shall be,—

When the day rate is 10 cents, the night rate will be 10 cents.
When the day rate is 15 cents, the night rate will be 15 cents.
When the day rate is 20 cents, the night rate will be 20 cents.
When the day rate is 25 cents, the night rate will be 20 cents.
When the day rate is 30 cents, the night rate will be 20 cents.
When the day rate is 35 cents, the night rate will be 20 cents.
When the day rate is 40 cents, the night rate will be 20 cents.
When the day rate is over 40 cents, the night rate will be ½ of the day rate, and when the figures so computed do not end in "0" or "5" the nearest figure so ending shall be the correct rate.

In computing toll rates between telephone stations in Louisiana, the Official Map of the Railroad Commission of Louisiana shall be used to ascertain the distances.

All rates, orders, rules or regulations in conflict with this order will be cancelled when this order goes into effect.

561 In order to allow the telephone company ample time to prepare and file its rates sheets and tariffs with the Commission, this order is made effective September 1st, 1906.

By order of the Commission.

Baton Rouge, Louisiana, August 6, 1906.

C. L. DE FEUNTES, *Chairman,*
W. L. FOSTER.
OVERTON CADE,
Commissioners.

[SEAL.] W. M. BARROW, *Secretary.*

I, W. M. Barrow, Secretary of the Railroad Commission of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of Order No. 552, issued by the Railroad Commission of Louisiana on the 6th day of August, 1906.

Given under my official signature and the seal of the Railroad Commission of Louisiana this 15th day of August, 1907.

[SEAL.] (Signed) W. M. BARROW,
Secretary of the Railroad Commission of Louisiana.

562 EXHIBIT MARKED D 4. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Rates.

563

(All rail)

To New Orleans from—	1	2	3	4	5
New York	118	98	78	61	50
Philadelphia	112	92	76	59	48
Baltimore	110	90	75	58	47
Boston	118	98	78	61	50

Cable.	Class. C. L.	Class. L. C. L.
Lead Covered	5	3
Nos.	4	3
Fixtures	3	1
Instruments	3	1
Telephone Booths, K. D. or folded	4	2

	Class. C. L.	Class. L. C. L.
Telephone Boxes (K. D.).	5	3
" (Set up)	3	1
Wire (Copper)	4	3
Wire Iron (Galvanized)	5	4

"Official."

564

To Nashville from—	1	2	3	4	5
New York, N. Y.	91	78	60	42	36
	118*	98*	78*	61*	50*
Philadelphia	85	72	58	40	34
	112*	92*	76*	59*	48*
Baltimore, Md.	83	70	57	39	33
	110*	90*	75*	58*	47*
Boston, Mass.	91	78	60	42	36
	118*	98*	78*	61*	50*

(Official Class'n.)

* Figures in red are rates to New Orleans, all rail.

565

To Meridian, Miss., from—	1	2	3	4	5	6	Special Iron C. L.
New York, N. Y.	114	98	86	73	60	49	34
	118*	98*	78*	61*	50*		
Philadelphia, Pa.	114	98	86	73	60	49	32
	112*	92*	76*	59*	48*		
Baltimore, Md.	107	92	83	70	57	46	31
	110*	90*	75*	58*	47*		
Boston, Mass.	114	98	86	73	60	49	34
	118*	98*	78*	61*	50*		
To Jackson, Miss., from—							
New York, N. Y.	124	109	93	83	71	64	46
	118*	98*	78*	61*	50*		
Philadelphia, Pa.	118	103	91	81	69	62	44
	112*	92*	76*	59*	48*		
Baltimore, Md.	116	101	90	80	68	61	43
	110*	90*	75*	58*	47*		
Boston, Mass.	124	109	93	83	71	64	46
	118*	98*	78*	61*	50*		

(Southern Class'n.)

* Figures in red are rates to New Orleans.

566

To Montgomery, Ala., from—	1	2	3	4	5	6	Special Iron C. L.
New York, N. Y.	126	108	95	81	66	54	42
	118*	98*	78*	61*	50*		
Philadelphia, Pa.	126	108	95	81	66	54	40
	112*	92*	76*	59*	48*		
Baltimore, Md.	119	102	92	78	63	51	39
	110*	90*	75*	58*	47*		
Boston, Mass.	120	105	93	77	63	50	42
	118*	98*	78*	61*	50*		

Cable.	C. L.	L. C. L.
Lead Covered	4	3
Fixtures	1	1
Instruments	1	1
Telephone, Booths K. D.	3	3
Wire, Copper	4	2
Iron (on reels or in coils)		
Special iron 6th	..	6

(Southern *Cases*.)

Telephone supplies, mixed shipments of, consisting of Sal Ammoniac, pencil zincs, blue stone, machine bolts, hand axes, piles, connections, screw drivers, lineman's spurs, screws, iron pole steps, porous cups, small spools of wire, pointed tacks or staples? (1)

* Figures in red are rates to New Orleans.

567 Exhibit No. 2, being the annual statement of the Cumberland Telephone & Telegraph Company to the Railroad Commission of Louisiana for the year ending June 30, 1906, marked D-7.

NOTE:—Transmitted in the original with this transcript as per stipulation of Counsel copied in the transcript.

568 EXHIBIT MARKED D 8. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Statement Showing the Ration of Each Item of Expenses in Louisiana to Total Expenses on June 30, 1906.

Operating Expenses.

Gross Earnings from Operation in Louisiana $1,228,691.31

Percentage of gross earnings.	Items of expenses.	Amounts.	Percentage of expenses.	
.192—%	Operating	236,449 50	.235 — %	
.266—%	Maintenance	341,385.54	.354 x %	
.105 x %	General	129,942.45	.135 — %	
.042 x %	Rent of Instruments	52,539.14	.054 — %	
.007 x %	Bad Debts	9,526.99	.009 x %	
.155 x %	Depreciation	192,598.13	.20 %	
.78— %	Total	$962,441.75		$962,441.75

Net earnings (deducting depreciation and bad debts) $266,249.56

Percentage of total expenses in Louisiana, including "Bad Dents" and "Depreciation," to Gross Earnings in Louisiana ..... 78—%

569 EXHIBIT MARKED D 9. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Statement Showing the Ratio of Each Item of Expenses in Louisiana to Total Expenses on June 30, 1905.

Gross Earnings from operation in Louisiana..... $1,026,109.10

Operating Expenses.

Percentage of gross earnings.	Items of expenses.	Amounts.	Percentage of expenses.
.181 — %	Operating.....	186,117.64	.243 — %
.250 x %	Maintenance.....	257,402.94	.336 — %
.113 — %	General.....	116,238.00	.151 x %
.044 — %	Rent of Instruments.....	45,351.20	.057 — %
.010 x %	Bad Debts.....	10,931.06	.014 — %
.145 x %	Depreciation.....	149,406.45	.182 — %
.743 x %	Total.....	$765,447.29	.....

Net earnings..... $260,651.81

Percentage of operating expenses (including bad debts and depreciation) to Gross Earnings..... .745 %

570 EXHIBIT MARKED D 10. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Statement Showing the Ratio of Each Item of Expenses in Louisiana to Total Expenses on June 30, 1904.

Gross Earnings from operation in Louisiana..... $780,277.19

Operating Expenses.

Percentage of gross earnings.	Items of expenses.	Amounts.	Percentage of expenses.	
.214 — %	Operating.....	166,769.28	.234 x %	
.315 — %	Maintenance.....	245,578.10	.345 x %	
.146 x %	General.....	114,308.28	.161 — %	
.052 %	Royalties.....	40,418.24	.057 — %	
.020 x %	Bad Debts.....	15,880.86	.022 x %	
.185 — %	Depreciation.....	128,606.68	.181 — %	
	Total.....	$711,561.44	100.00	711,561.44

Net income for Louisiana..... $68,715.75

Percentage of Operating Expenses (including "Bad Debts" and "Depreciation") to Gross Earnings..... .924 x %

571 EXHIBIT MARKED D12. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Comparative Statement of Earnings and Expenses of the Cumberland Telephone & Telegraph Company in the State of Louisiana, as Shown by the Sworn Statements of the said Company, to the Railroad Commission of Louisiana.

	Year ending June 30.		
	1904.	1905.	1906.
Capital Stock (entire line).....	$11,595,350	$13,434,550	$15,909,250.00
Total Gross earnings, Louisiana	780,277.19	1,026,109.10	1,228,691.31
Total Expenses, Louisiana.....	567,073.90	605,109.78	760,316.63
Net earnings (Bad debts and depreciations not deducted).....	223,203.28	420,999.32	468,374.68
"Depreciation" charged to "Operating expenses," in Louisiana.....	128,606.68	149,406.45	192,598.13
New earnings, after deducting "Depreciation," State of Louisiana.....	84,597.61	271,592.87	275,776.55

572 EXHIBIT MARKED D13. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Dividends Declared.

Year Ending June 30, 1904..... $783,979.00
Entire line.
Year Ending June 30, 1905 .... $203,417.48
State of Louisiana.
Year ending June 30, 1906..... $237,572.94
State of Louisiana.

573 EXHIBIT MARKED D14. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Statement of Value of Property in Louisiana, as Shown in the Annual Sworn Reports of the Cumberland Telephone & Telegraph Company, to the Railroad Commission of Louisiana, for the Years Named.

Value of Property in Louisiana.

	Years ending June 30.		
	1904.	1905.	1906.
Real estate	$79,250.00	$98,100.00	$102,600.00
All other property, including lines, wires, poles, equipment, etc.	662,259.70	1,161,051.35	1,579,404.70
Total	741,509.70	1,259,151.35	1,682,004.70

574 EXHIBIT MARKED D15. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Grand Total "Expenses," Louisiana.

	Total expenses.	Including amount for "depreciation."
Year Ending June 30, 1904	$711,561.44	$128,606.68
Year Ending June 30, 1905	765,447.29	149,406.45
Year Ending June 30, 1906	962,441.75	192,598.13

575 EXHIBIT MARKED D 16. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Total Gross Earnings.

Louisiana.

Year Ending June 30, 1904	$780,277.19
Year Ending June 30, 1905	1,026,109.10
Year Ending June 30, 1906	1,228,691.31

576 EXHIBIT MARKED D 17. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Capital Stock.

Year Ending June 30, 1904	$11,695,350.00
Year Ending June 30, 1905	13,434,550.00
Year Ending June 30, 1906	15,909,250.00

577 Map marked Exhibit D-1.

NOTE.—Transmitted in the original with the transcript as stipulation of Counsel copied in the transcript.

578 EXHIBIT MARKED D 21. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Figures same as shown in Ann. Report; but re-arranged.

6. *General Balance Sheet for the Year Ending June* 30, 1904 (*for Entire Line*).

Debits (assets).	Amount.	Credits (liabilities).	Amount.
Cost of Line.....	1520098568	Capital Stock	1169535000
Cost of Supplies.....	21660050	Surplus.....	116675700
Cash.....	22620768	Reserves.....	93627911
Supplies on Hand.....		Funded Debt.....	110500000
Stocks and Bonds.....		Bills Payable.....	
Real Estate.....	57687747	Accounts Payable	
Bills Receivable.....		Undivided Profits	
Accounts Receivable.....,	72661828		
Other assets:		Other assets:	
		Debt.....	167125515
		" Real Estate.....	1540000
Profit and Loss.....		Profit and Loss.	35724835
Total	$1694728961	Total	1694728961

579 EXHIBIT MARKED D 22. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

Figures same as shown in Ann. Report; but re-arranged.

6. *General Balance Sheet for the Year Ending June* 30, 1905 (*for Entire Line*).

Debits (assets).	Amount.	Credits (liabilities).	Amount.
Cost of Line.....	1748753408	Capital Stock.....	1343455000
Cost of fixtures.....		Surplus.....	152224997
Cash.....	27362682	Reserves.....	107957177
Supplies on Hand.....	22826319	Funded Debt	109400000
Stock and Bonds.....	35756606	Bills Payable.....	151045659
Real Estate Ex Bldgs.....	60588959	Accounts Payable	49570809
Bills Receivable.....	5178404	Undivided Profits.....	50139769
Accounts Receivable.....	75183530		
Other assets:		Other assets:	
		Subscription to Cap. S't'k.	782500
		Employés' Savings a/cs...	11073997
Profit and Loss.....		Profit and Loss	
Total	$1975649908	Total	$1975649908

580 EXHIBIT MARKED D 23. OFFERED BY DEFENDANT AND FILED AUGUST 19, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13473 (Consolidated).

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

6. *General Balance Sheet for the Year Ending June* 30, 1906 (*for Entire Line*).

Debits (assets).	Amount.	Credits (liabilities).	Amount.
Cost of Line	2119945684	Capital Stock	159092500
Cost of fixtures		Surplus	19408427
Cash on Hand	17913412	Reserves	10873818
Supplies on Hand	41136123	Funded Debt	10910000
Stocks and Bonds	8426083	Bills Payable	25686952
Real Estate	68485942	Accounts Payable	4685557
Bills Receivable	32473424	Undivided Profits	*2626514
Accounts Receivable	80791170		
Other assets:		Other assets:	
		Subscription to Capital Stock	121750
		Dividend payable 7/1/06.	2784118
		Employees' Savings a/c.	727545
Profit and Loss		Profit and Loss	
Total	$2369171838	Total	$2369171838

* Letter 12/8/06 claims this amount is a dividend declared to be paid on the first of October and is therefore a liability.

581 EXHIBIT OFFERED BY DEF'T, MARKED D 24, BEFORE MR AUG. 19, 1907.

U. S. Circuit Court, Eastern District of Louisiana.

No. —.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
RAILROAD COMMISSION OF LOUISIANA.

(Stamped:) (Railroad Commission of Louisiana. Filed Dec. 23, 1906. ——— ———, Secretary.)

PONCHATOULA, LA., *Dec. 8th*, 1906.

C. L. De Fuentes, Esq., Chairman Railroad Commission, New Orleans, La.

DEAR SIR: I have been approached by a number of timber men in my parish concerning the effect that the enforcing of your order

against the Cumberland Telephone Company will have upon their business, and upon the business of the Parish in general.

There has been for the past three of four years a large business done by the people of this Parish in telephone poles for the Cumberland Telephone Company. These telephone poles are manufactured from timber that heretofore has been useless and from which the people of this Parish have derived no revenue whatever. I understand from a careful view of conditions that the reduction of the toll rates of the Telephone Company will cause them to put a stop to the extensive building work which they have been doing on such a large scale, as the rates which they are ordered to use, will net them a loss in their business. As I have already stated, this pole business has been of very great benefit to the Parish in a number of ways. It enables the timber men to utilize a class of timber which heretofore was not available; it has been giving steady and remunerative employment to over one thousand men engaged in cutting and hauling these poles, and it has materially benefited the price of land. The sudden cessation of this work would have widespread effect inasmuch as it would depress the price of land, put out of employment a large force of men, and would indirectly damage nearly everyone in the parish, and the loss of this business would be keenly felt by everyone.

582 The Cumberland Telephone Company is most satisfactory to deal with, as all of our timber men testify. Most of their purchases are cash transactions, and I can find no one who is dissatisfied with the service that the Telephone Company has been giving them, and who do not apperciate the effort that the Telephone Company is making to better the already satisfactory telephone conditions.

I trust that the Railroad Commission will consider this matter very carefully before putting into effect a condition which will so greatly damage the people of our Parish, and I do not think that my statements above even approach the effect that the cessation of this pole business will have upon our people.

Yours truly,

(Signed) J. S. SETTOON,
Senator 19th Dist.

" C. D. ABELS,
Re. Tangipahoa P'h.

583 *Hearing and Submission of Consolidated Causes.*

Extract from the Minutes.

NEW ORLEANS, MONDAY, *August 19th*, 1907.

No. 13473, Consolidated.

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

Nos. 61 and 66, Baton Rouge Division.

This consolidated cause came on this day for final hearing by consent of Counsel for all the parties to be heard and decided at Chambers before his Honor Eugene D. Saunders, District Judge, upon the Bills of Complaint, Answers, Replications and the testimony, evidence and proofs as per Notes of Evidence on file and was argued by W. L. Granbery, Esq., for Complainant, and Walter Guion, Attorney General of Louisiana, and E. H. M'Caleb, Jr. Esq., for the Defendant; and submitted—when his Honor took time to consider.

584 *Order Separating Consolidated Cases.*

Filed August 26, 1907.

U. S. Circuit Court, Eastern District of Louisiana. In Equity.

No 61, Baton Rouge Division.

THE CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
versus
THE RAILROAD COMMISSION OF LOUISIANA.

U. S. Circuit Court, Eastern District of Louisiana. In Equity.

No. 66, Baton Rouge Division.

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
versus
THE RAILROAD COMMISSION OF LOUISIANA.

(Consolidated.)

The above causes having been heretofore consolidated and tried as one cause,

It is now ordered that said consolidated causes be separated, for the purposes of the decrees therein.

Done and signed at New Orleans, Louisiana, as of date August 24th, 1907, *nunc pro tunc.*

(Signed) EUGENE D. SAUNDERS,
United States Judge.

585 *Reasons for Judgment.*

Filed August 24, 1907.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division. In Equity.

No. 61.

THE CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

I.

The Complainant is a corporation organized under the laws of the State of Kentucky, and is domiciled in and a resident of that State and owns and operates an extensive system of telephone lines and exchanges in Louisiana and other States.

The defendant, the Railroad Commission of Louisiana, is a public corporation organized under the laws of the State of Louisiana, and is empowered by the Constitution and laws of Louisiana to *adopt, change or make reasonable and just rates, charges and regulations*" for telephone companies operating in that State on their business between points therein.

In the exercise of the power so conferred upon it, the Commission, on December 13, 1905, adopted an order (No. 488) fixing a tariff of rates and charges on complainant's intra-Louisiana toll line messages. This tariff was adopted by the Commission precisely as framed and proposed by complainant itself.

On August 6, 1906, the Commission adopted another order
586 (No. 552), whereby considerable reductions were made in the tariff contained in order 488. There is a preamble to order 552, which gives the reasons for the reduction in the rates, as follows:

"Upon numerous complaints being made to the Commission "against the charges made by the Cumberland Telephone & Tele-"graph Company in regard to the rates for long distance conversa-"tions between points in the State of Louisiana, the Commission "instituted this proceeding, and accordingly a hearing was had at "Baton Rouge, Louisiana, on August 6, 1906.

"The Commission has fully investigated the charges made by said "Company; believes they are unnecessarily high and excessive, and "at the hearing the Company failed to show any good reason why "the reductions proposed by the Commission shall not be made.

"The Commission finds it necessary, however, to rearrange the "rates proposed by it in the order and in accordance with its con-"clusions; and it is hereby, ordered &c.": then follows a detailed tariff of the rates as reduced.

On August 16, 1906, complainant filed with the Commission a petition asking for a rehearing on its decision repealing the tariff

contained in Order 488, and substituting the lower tariff contained in Order 552. This petition gives the following as the grounds upon which it claimed a rehearing, viz:

"The Cumberland Telephone & Telegraph Company hereby re-
"spectfully prays for a re-hearing of the above case, and that
587 "the judgment therein rendered and filed on the sixth day of
"August, 1906, be set aside on the following grounds, to-wit:

"*First.* The judgment of the Commission states that numerous "complaints have been made to the Commission against the charges "made by this Company for long distance conversations between "points in the State of Louisiana, but at no time, either prior to or "at the trial of this case, was any specific information given to this "Company of the character of the complaints or of the particular "rates complained of, and the Company was unable to meet any "general or indefinite complaint, and was not placed in the position "to meet specific complaints with specific evidence; that this Com-"pany was not furnished with the name of a single complainant.

"*Second.* That the Commission has not made any investigation "which would allow it to reach a conclusion that the rates charged "by the Company were unnecessarily high or excessive; that this "Company was entitled under law, to be confronted with some "charges supported by evidence sufficient to establish a *prima facie* "case before it could be called upon to answer and that no evidence "of any kind whatsoever was offered at the trial or produced, to "show that the long distance rates of this Company were unreason-"able or excessive; nor were any of the complaints made to the Com-"mission brought to the knowledge or submitted for the inspection "of or made known to this Company.

"*Third.* That the long distance rates in force prior to this recent "order, having been approved and put in force by the Commission, "were in law presumed to be reasonable and proper, until this pre-"sumption was met and overcome by proof, and this Company could "not legally and properly be called upon to offer any evidence until "this presumption had been met and a *prima facie* case made out.

"*Fourth.* That the Commission proceeded upon the theory, as "shown by its order, that the burden was upon the Company to show "good reason why the reductions proposed by the Commission "should not be made; whereas, under the law, the rates then in force "and established by the Commission were presumed to be reasonable "and fair and could not be reduced unless good reason were shown "why the reductions proposed by the Commission should be made.

"*Fifth.* Because it was shown at the trial on behalf of this Com-"pany that the long distance rates prevailing in Louisiana were as "low as existed in other parts of the country and that Louisiana was "enjoying the lowest schedule of long distance rates promulgated "by any telephone company in the United States, and this, notwith-"standing the fact that in many portions of the United States, much "more thickly populated than Louisiana, the revenues of long dis-"tance lines greatly exceeded those in Louisiana by reason of greater "population, and the expense of lines and equipment in Louisiana,

"by reason of its damp climate and soil, were and are greater
588 "than in other localities, and notwithstanding that it was
"additionally shown and known to the Commission that the
"proportion of swamps and navigable waters requiring to be crossed
"by cables, was excessive in Louisiana.

"*Sixth.* Because the business of this Company in this State has
"not heretofore, and does not now, justify the payment to the stock-
"holders of the Company of more than seven per cent. dividend,
"which is less than what would be a reasonable return on capital
"invested, considering the nature and character of the business,
"and no showing whatsoever was made, and in fact there was no
"intimation of any kind that the Company was deriving excessive
"profits from its business.

"*Seventh.* That no evidence was offered and no tender of any evi-
"dence made to show *that* the Company's receipts and expenditures
"from toll lines in the State or any examination whatsoever made
"into the revenues and expenses of toll lines.

"*Eighth.* Because the toll rates in force and approved by the Com-
"mission are in themselves reasonable and fair and should not be
"disturbed.

"*Ninth.* Because it is not possible for the Commission to reach a
"satisfactory conclusion and be able to determine that the Com-
"pany's long distance toll rates are high or excessive unless it will
"make a thorough investigation into the revenues derived by the
"Company from its business, the expenditures of the Company, the
"depreciation, cost of maintenance, amount of investment, and
"other elements entering into the problem, which can only be ar-
"rived at by careful, painstaking and expert investigation and ex-
"amination, and no such investigation or examination has been
"made and no effort made to make such investigation.

"*Tenth.* Because the rates proposed to be established by the Com-
"mission in its Order of August 6th, 1906, if put in force, would be
"ruinous and cause irreparable injury to this company, because, as
"this Company operates, not only in the State of Louisiana, but
"also in the States of Tennessee, Kentucky, Mississippi, Illinois and
"Indiana, the toll rates in all of said states, which are upon the same
"schedule as prevailing in this State, heretofore approved by this
"Commission, would necessarily have to be changed to conform to
"the reduced rates or lower rates established for Louisiana, for it
"would be manifestly impossible for this Company to charge more
"in those states than charged in Louisiana for a similar service in
"the face of the fact that in those states the lines of the Company
"largely run through more populous districts and cost less to build
"and maintain, and because, if this Company accepts and acquiesces
"in the new or reduced rates established by this Commission, as
"being reasonable, it would not be able and could not claim that the
"higher rates charged in other states for similar service, rendered
"under more favorable circumstances, were not unreasonable.
589 "*Eleventh.* Because, even upon the theory adopted by the
"Commission, its order of August 6th, 1906, is unreasonable,
"inconsistent and unfair because in the paragraph providing for

"toll rates between any two points exceeding twenty miles it es-
"tablishes rates which are not only inconsistent but which would
"compel this Company, if it acquiesced therein, to discriminate
"against its patrons by charging less to patrons for long distance
"conversation between points exceeding twenty and less than forty
"miles than it charged its patrons for conversations between points
"less than twenty miles, the difference being in the pole-line and air-
"line measurements.

"12*th*. Because a comparison of rates established by the Commis-
"sion's order of August 6th, with rates established by the Commis-
"sion for similar service by telegraph companies clearly shows that
"the proposed rates are unreasonably low.

"Wherefore, petitioner respectfully prays for a re-hearing and
"that this, its application be set down for hearing at a date to suit
"the convenience of the Commission after its vacation."

The rehearing asked for was granted, but apparently nothing was done on the rehearing except to hear argument. On the same day on which this argument was heard, the Commission rendered the following order:

"The Commission having granted a rehearing in the above case,
"and having heard the Cumberland Telephone & Telegraph Com-
"pany at Baton Rouge, La. on October 10, 1906, finds no cause to
"change its opinion as to what constitute fair and reasonable rates
"for telephone toll service, as furnished by the said company, be-
"tween places in the State of Louisiana, and as set forth in its order
"No. 552, adopted on August 6, 1906.

"It is now

"Ordered, That the rates as adopted and established by the said
"Order No. 552, adopted August 6, 1906, be and the same are hereby
"re-affirmed, and made effective within 10 days from the date of this
"order.

"By order of the Commission.

"Baton Rouge, Louisiana, Oct. 10, 1906."

590 Thereupon the Complainant, on October 19, 1906, filed its bill in this case, praying that the Commission be enjoined from putting in force the reduced tariff contained in order No. 552; that said order be declared null and void; and that the Commission be enjoined from instituting any proceedings to compel complainant to pay fines or penalties for disregarding and violating said order. This relief is asked upon two grounds:

1st. That the tariff in order 488, is entirely fair, just and reasonable, so far as concerns the public, but does not afford complainant a fair, just and reasonable compensation for its services; whereas the tariff proposed in order 552, would compel complainant to render its services at unreasonable, unjust and unremunerative rates, which would not afford complainant a reasonable return for the service rendered; that said reduced tariff is unreasonable and unjust in itself, and is not justified by any conditions either concerning the services in question or by the financial or physical condition of complainant's property or affairs, and would result in the taking of com-

plainant's property without due process of law and without compensation previously made, in violation of specified provisions of the Federal and State Constitutions.

2nd. That said Order No. 552 was adopted without evidence or investigation justifying it, and "without making an investigation or examination into any facts necessary to reach a determination and without any effort in that direction."

Before taking up the evidence in the case, let us see what
591 under the Constitution of Louisiana are the powers of the Commission, in what manner those powers can be validly exercised, and the relation of the Courts to the Commission, under the provision of the Constitution itself.

II.

Art. 283 of the Constitution of Louisiana creates a Commission, designated as the *Railroad Commission of Louisiana,* and Art. 284 declares that "the *power and authority* is hereby vested in the Commission, and it is hereby made its *duty,* to adopt, change or make *reasonable and just rates, charges and regulations,* to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates, and *telephone and telegraph charges,* to correct abuses. and prevent unjust discrimination and extortion in the rates for the same" on lines or business done within Louisiana.

"The Commission shall have power to adopt and enforce such *reasonable* rules, regulations and modes of procedure, as it may deem proper for the discharge of its duties, and to hear and determine complaints that may be made against the classification and rates it may establish, and to regulate the mode and manner of all investigations and hearings of railroad companies, and other parties before it, *in the establishment of rates, orders and charges* and other acts required or authorized by these provisions. They shall have power to summon and compel the attendance of witnesses, to swear witnesses and to compel the production of books and papers, to take testimony under Commission and to punish for contempt, as fully as is provided by law for the district courts.

592 "*Art. 285.*—If any railroad, express, telephone, telegraph, steamboat and other water craft or sleeping car company, or other party in interest, be *dissatisfied* with the decision, or fixing of any rate, classification, rules, charge, order, act or regulation, adopted by the Commission, such party *may file a petition,* setting forth the cause of objection to such decision, act, rule, rate, charge, classification, or order, or to either or to all of them, *in a court of competent jurisdiction* at the domicile of the Commission, *against said commission, as defendant,* and either party to said *action* may appeal *the case* to the Supreme Court of the State, without regard to the amount involved, and all such *cases,* both in the trial and appellate courts shall be tried summarily and by preference over all other cases. Such *cases* may be tried in the court of the first instance either in chambers, or at term time; provided, all such appeals

shall be returned to the Supreme Court within 10 days *after the decision of the lower court:*

"Art. 286 * * * Provided, that whenever any rate, order, charge, rule or regulation of the Commission *is contested in court*, as provided for in Art. 285 of this Constitution, *no fine or penalty* for disobedience thereto, or disregard thereof, shall be incurred *until after said contestation shall have been finally decided by the Courts, and then only for acts subsequently committed.*"

Powers of commission and how exercised.—The Constitution begins by authorizing the Commission to establish *"reasonable and just* rates, charges and regulations," with respect to the public service corporations subjected to its jurisdiction. As the
593 Commission cannot know by intuition what rates, charges and regulations would be *"reasonable and just,"* before it has made a careful examination into all the facts which bear upon these rates, charges, and regulations, it would be a fair inference, even if there were nothing else in the Constitution on the subject, that the Constitution by necessary implication requires the Commission to make full investigation into the facts before it establishes its rates, charges and regulations. *Cum aliquid imperatur, imperatur et id perquod devenitur ad illud.* The reasonableness and justice of a charge for transportation by a railroad, for example, depends upon a great many facts, most of which are peculiar to each road. What did the railroad actually cost to construct? How much does it cost to operate? Was the road constructed carefully, economically and properly? or was it constructed extravagantly and wastefully, with unnecessary expenditure of money? Is the cost of operation only what a prudent and intelligent administration would incur? Or are unnecessary expenses incurred? Is the pay roll loaded down with high salaries to a few favored and virtually sinecure officials? or are the salaries only such as are customarily paid in the administration of similar properties of similar magnitude? What is the volume of business done? What are the facts, in the locality in which the corporation operates, affecting the question whether a decrease in rates will lead to an increase in business? And what, relatively to the increased business, would probably be the increased cost of operation? What amount of business has the company actually done in the past; and what has it actually cost, all things considered, to do this amount of business? What does it cost to maintain the plant of the company in good working order, and what is the best and most economical way to provide for
594 meeting this cost? All these and many other questions of fact must be most carefully investigated and considered before any Commission can act intelligently and with any likelihood of success in the matter of establishing "reasonable and just rates, charges and regulations" for public service corporations. Even when all the facts, which should enter into the discussion and control the decision, have been ascertained with the utmost possible care and exactness, the conclusion is still doubtful in many cases. Where the facts are not known or inquired into, the regulations made by any Commission would be mere arbitrary edicts, or at best,

only conjectures made in good faith, and tested at the expense of the regulated corporations. The whole spirit of our institutions revolts at the idea that any Commission or department of the Government should be vested with such arbitrary and irresponsible power over the fortunes or business of any persons whatever—even though they belong to the much harrassed and perplexed legal persons known as public service corporations.

In view of the fact that the Constitution in express terms authorizes the Commission only to establish "*reasonable and just* rates, charges and regulations," and of the further fact that the *reasonableness* and justice of such rates, charges and regulations cannot be even conjectured intelligently without exact knowledge of the facts, I should have no hesitation in concluding,—though there were nothing else in the Constitution but the bare mandate to establish *reasonable and just* rates, &c.,—that the Constitution by implication requires the Commission to make full and adequate investigation into the facts before it exercises its powers. It has no arbitrary authority; it is not a bureau of conjecture and experiment.

595 The provisions of Art. 284 of the Constitution seem to me to put this conclusion beyond dispute. That article declares that—

"The Commission shall have power * * * *to hear and determine complaints* that may be made against the classification and rates it may establish and to regulate the mode and manner of all *investigations and hearings* of railroad companies and other parties before it, in the *establishment of rates, orders, charges, and other acts* required or authorized by these provisions. They shall have power to *summon and compel the attendance of witnesses, to swear witnesses, and to compel the production of books and papers, to take testimony under commission, and to punish for contempt, as fully as is provided by law for the district courts.*"

Not only is the Commission furnished with the amplest power to investigate all facts concerning the proper discharge of its duties, but express mention is made of the Commission's regulation of the use of these powers in the *establishment* of rates, charges, orders, &c. This clearly indicates that the Constitution expected, and therefore requires, that the conferred powers of investigation shall be used in the investigation and ascertainment of those facts which it would be indispensable for the Commission to be informed about *in establishing* reasonable and just rates. The idea of the Constitution is obviously that the Commission shall, in every exercise of the powers entrusted to it, use every means to learn what reason dictates, and to do what justice requires.

596 In discussing the powers of a similar Commission in California, the Supreme Court of that State say:

"If they (the Commission) attempt to act *arbitrarily, without investigation, or without the exercise of judgment or discretion* * * * they *violate* their duty, and *go beyond* the powers conferred upon them." San Diego Water Co. *vs.* San Diego, 118 Cal. 556—cited with approval by the Supreme Court of the United States in San Diego Land & Town Co. *vs.* National City, 174 U. S. 752.

I think this dictum of the California Supreme Court correctly states the law as to the powers, and the legal mode for the exercise of the powers, of the Commission to regulate the Public Service Corporation of the different States. These Commissions have no *arbitrary* powers. They have no authority to fix any rate they please simply because it so pleases them. Their only authority is to fix *reasonable and just* rates. This requires *investigation* into the facts, in order to enable the Commission to determine, by the exercise of judgment and discretion upon the ascertained facts, what is reasonable and just. It would be as absurd to talk of the exercise of judgment or discretion, without a previous investigation into and determination of the facts, as to talk of feats of swimming performed on dry land, or the use of the microscope in Egyptian darkness.

Relation of the Courts to the Louisiana Railroad Commission.—In most states the laws do not make provisions for a review by the Courts of the action of the Commissions, when the regulated corporations are dissatisfied with such action. But the Constitu-
597 tion of Louisiana expressly subordinates to the decision of the Courts the final validity of the action of the Commission. When any party affected by any order of the Commission is dissatisfied therewith, the Constitution declares that the party dissatisfied shall have the right to file a petition in a court of competent jurisdiction, making the Commission defendant thereto. The dispute between the Commission and the party dissatisfied is then tried in court. That dispute is whether the rate, order, or regulation of the Commission is *reasonable and just,* or not. The Courts decide this question, and are bound to decide it on their own convictions as to what is reasonable and just under the proved facts of the case. The entire controversy goes into the courts in Louisiana for decision, and the courts are not limited to the determination of the single question whether the order complained of would violate the 14th amendment of the Federal Constitution, by confiscating, in effect, the complainant's property, or appropriating it to the use of the public without allowing the owner due compensation or return for such use. If that question is in a particular controversy, it goes, of course, to the court, but *the entire controversy* which was between the complainant and the Commission, is transferred in Louisiana to the court for its decision.

When the controversy comes before the court for decision, what will be the result if it should appear that the Commission's action was so irregular as to be null? If, for example, it should be shown that the order complained of was in substance a mere arbitrary edict, made without investigation, and therefore made without the exercise of judgment and discretion upon the actual and known facts of the case? I think a court would have no difficulty in holding
598 such action of the Commission to be illegal and null, not because it is demonstrated to be unjust or unreasonable, but because the Commission had no power to act in that manner. But could the court go further, and on the evidence adduced at the trial in court, which the Commission had not considered or passed upon,

hold that the order complained of was unreasonable and unjust? My own view would have been, that in such a case, the court should have limited its action to declaring the order complained of to be illegal. But the Supreme Court of Louisiana seems to have decided the other way in the case of the Railroad Commission *vs.* Kansas City Southern Ry Co., 111 La. 133.

In that case the Commission passed a general order forbid-ing the removal of any switches or spurs without first obtaining the consent of the Commission. In ignorance of the order, the defendant, a few days after it had been adopted, removed the spur of an abandoned mill. The Commission imposed a fine of $1000 for this violation of its order. The defendant resisted on the ground that the spur was useless and abandoned and that there was no reason to maintain it. The Commission refused to hear evidence on this defence and sued solely on the ground that its order had been disobeyed. In the suit to enforce and collect the fine imposed by the Commission, the defendant appeared and was permitted to introduce evidence to establish its defence. The reasonableness of the order depended on the facts pleaded in defence. The Supreme Court held the order in passing the fine to be unreasonable, and therefore null—thus giving effect to evidence determinative of the reasonableness of the order, which had been first received in Court and had never been
599 passed on by the Commission. For the Commission had proceeded on the theory that mere disobedience to their order entitled them to fine the Company that disobeyed, regardless of evidence to show that obedience in the particular case was not reasonably required. The Supreme Court rejected this theory, declared that evidence was admissible to show an excuse and proceeded to pass on the evidence offered to establish an excuse.

III.

The Commission has offered in this case only certain statements and exhibits furnished by the Telephone Company, and tending to show its financial condition and property, and the evidence of its Secretary, Mr. Barrow and an affidavit of the president, Mr. de Fuentes, as to the manner in which and the facts on which the order No. 552 reducing the rates, was adopted. Mr. Barrow's testimony is not as specific and clear on this point as it might have been, but it is due to him to say that he answered all questions put to him with entire frankness. I gather from his testimony that the reason for adopting Order 552 was this:—The complainant is required by law to file an annual statement with the Commission, showing among other things the value of its property in Louisiana and the net amount realized from its Louisiana business. On the basis of the value shown by these statements, the complainant was making from 10% to 15% a year. The Commission was of opinion, therefore, that on its own showing the profits made by the complainant were unreasonably large, and accordingly made the reduction contained in Order 552.

Mr. Barrow admits that these annual statements of the com-
600 plainant showed only the valuation placed on the company's property in Louisiana for the purposes of taxation and that

such valuation of the property was not, in his opinion, its real value. Yet the reductions ordered were based solely, so far as appears, on the relation between the valuation so shown and the profits made by the Company. (Barrow p-. 29, 30.)

The problem of fixing reasonable and just rates is a much more difficult and intricate problem than this simple rule of three method followed by the Commission. The factors to be considered are far more numerous and the operation much more complicated.

In the oral argument it was conceded that it would be fair for complainant to earn 7% net dividend on its actual investment in Louisiana from its Louisiana business. The evidence is clear that the complainant is not now earning that much in its Louisiana business alone, nor on its Louisiana business with a proportion of interstate business added.

It is urged by the Commission that included in the Louisiana investment of Complainant is a sum earned from Louisiana business, set aside in the reserve fund and then used in extending the system in Louisiana, and now treated as a part of the Louisiana investment of the stockholders. This may be so to some extent—it is certainly possible. But it is impossible for me to determine from the figures in the record to what extent, if at all, it is a fact. Counsel for defendant have not themselves undertaken to indicate what, even in round figures, they consider is the sum thus earned in the business and reinvested in the business, without having been
601 distributed to the shareholders in dividends. It will be time to consider the legal results from such a state of facts when it shall have been shown to exist in a definite sum and not in a purely conjectural amount.

The evidence is conclusive that so far as the public is concerned, the existing rates established by Order No. 488 are reasonable and just. No attempt has been made by evidence, no suggestion has been made in the oral argument that these charges are unreasonably high to the public.

Counsel for the Commission urge with great urgency,

1. *That the law presumes the rates established by the Commission to be reasonable and just.*

2. *That the value of complainant's property and plant in Louisiana is, in reality, the amount shown in the complainant's annual statement to the Commission.*

3. *That the reduced rates established by Order 552 are, as a matter of fact, reasonable and just.*

1. *As to Presumption that Rates ordered by Commission are reasonable and just.*

The establishment of reasonable and just rates of compensation for the services rendered by Public Service Corporations, is a task of the greatest difficulty and one that requires the most careful and thorough investigation into a multitude of facts. If the Commission will take the trouble to read the cases of Smythe *vs.* Ames, and Regan *vs.* Farmers' Loan & Trust Co., decided by the Supreme Court of the United States, or the decisions in any volume of the Reports of the

Interstate Commerce Commission, they will see how many are the factors to be considered, and what a mass of testimony and figures have to be sifted before reaching any conclusion as to what rates are reasonable and just.

602 In the present case, no investigation whatever was made by the Commission before they acted. They simply combined two statements contained in the annual report of Complainant—the statement as to value of plant and the statement as to net earnings—and from these two amounts figured out what would be a reasonable and just return for the Complainant to get from its Louisiana business. This precedure ignores nearly all the elements of the problem and bases this Commission's solution on an erroneous precess.

There is no reason in law nor in fact why a court should presume that the Commission has by this method of dealing with the problem, hit upon rates that are in fact reasonable and just.

2. *Value of Complainant's property in Louisiana.*

Counsel for the Commission argue that the complaint's property in Louisiana was not all paid for with complainant's capital, but was partly paid for out of a surplus, or reserve, or depreciation fund, which was accumulated by complainant from the receipts of its Louisiana business, and was then reinvested, not in repairs or maintenance, but in extensions and additions to the property. This may be a fact, but it is not shown to be a fact. The Commission has power, if it wishes to do so, to direct the books of Complainant to be so kept as to show such use of receipts. In the present state of the books, this seems to be impossible. And the floating debts of the Complainant would seem to be much greater than any sum which could possibly have been used from the reserve, or surplus, or depreciation fund for extensions and additions, after paying for maintenance and repairs.

603 Apart from this discussion as to the value of complainant company's property in Louisiana, that value is not the sole, nor probably the most important factor in determining the reasonableness and justness of the rates which the complainant is entitled to charge for the busines it does in Louisiana. It may well happen that although the complainant's plant was constructed properly and economically and without any waste, yet the present value of that property would be little or nothing. For wrecking purposes the plant is probably worth nothing more than the value of the exchange buildings in the different cities, which would be only a small part of the sum expended by the complainant. Other conditions may have destroyed the attractiveness of the property as an investment. For example the apprehension of competition from new inventions, such as the telautograph or the telepose or others, may have made capitalists unwilling to invest money in telephone plants. Other conditions may have had the same effect. It is conceivable, therefore, that the plant might have no value whatever at the present date, none the less the business is conducted for the present; and it surely could not be claimed that because the present value of the plant is nothing, therefore the persons using that plant would be

entitled to use it without paying any sum whatever for the use of it. While the present value of the plant is one element to be considered in determining the reasonableness of the rates, it is very far from being the most important element. And yet it is the only element which the Commission has considered in this case at all.

3. *As to the reasonableness of the rates.*

The only reason that the Commission has for supposing that it has correctly guessed what would be a reasonable and just rate of compensation to allow the telephone company, is its assumption that that rate could be properly arrived at by considering only the value at which the Complainant's property is taxed in Louisiana and
604 the net returns which the company makes over and above its expenses and allowance for depreciation and repair. As I have just stated, this is something wholly erroneous. Under the facts disclosed in this record, I am clearly of opinion that complainant is entitled to a fair return on its money actually invested; that seven per cent. in a business of the sort carried on by complainant, is a fair and proper return, and that complainant is not now deriving from the rates authorized by Order 488, as much as seven per cent. on its investment in Louisiana.

The public could not, today, get as complete a telephone system as the existing one, by expending a much larger sum than that on which the complainant is asked to base its rates on its profit. Moreover, it has been shown that the rates charged in Louisiana, are the same in most cases, and less in many cases, than the corresponding rates charged under similar circumstances and for similar
605 service by telephone companies elsewhere. The public, therefore, has no shadow of a reason to complain either that it is paying a rate that is unreasonable and unjust as to the public, or that the complainant is making an unreasonably large profit on its investment.

I therefore find that the order of the Commission, No. 552, reducing the rates authorized by Order No. 488, is illegal and null, by reason of its being an arbitrary conjecture, not based on investigation or the exercise of judgment and discretion applied to ascertained facts; and further that the evidence in this case establishes that the complainant does not now earn under the tariff in Order 488, as much as 7% on its Louisiana business; and as I consider that a net profit of 7% on the Louisiana investment, would be only a fair return in a business of this character, (and counsel for defendant seem disposed to admit that this would be a fair and reasonable profit) any reduction of the existing rates would be unreasonable and unjust.

There will be judgment for Complainant as prayed for in the bill.

Aug. 24-1907.

(Signed) EUGENE D. SAUNDERS, *Judge.*

606 *Reasons for Judgment.*

Filed August 24, 1907.

THE CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

No. 66.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

In its bill in this case, the complainant company avers that the existing rates of charges, even as fixed in Order No. 488 of the Railroad Commission of Louisiana, does not give it an adequate, just and reasonable return, and in particular that the charge for night messages, Sunday messages and for use of the cable lines over the Mississippi River, are inadequate. It further avers that it has applied to the Railroad Commission for permission to abolish the night rates and Sunday rates, and to increase the charge for cable messages, but avers that the Railroad Commission has refused to take any action on this petition. Accordingly, it asks for an injunction, restraining the Commission from interfering with Complainant in abolishing the half rates for night and Sunday toll line business and in making extra charges for cable service, and that the Complainant's right to make these changes be decreed upon the final hearing.

It appears from the answer that the Commission declined to take any action on this application while the suit No. 61, just disposed of, was pending.

Inasmuch as the Commission has never officially acted upon the above stated application of complainant, I think that this court should decline to take action for the present and until the Railroad Commission has had an opportunity to consider and pass upon the matter; especially am I of this opinion since the counsel for
607 defendant have stated in open court that there is no disposition whatever on the part of the Commission to delay or evade action in this matter. The refusal of the Commission to act was *bona fide* and was based, I think, upon sufficient reasons.

Accordingly, I shall take no action on this petition. The Complainant will be referred to the Railroad Commission who will consider and pass upon the application. If the Complainant is dissatisfied with the ruling of the Commission, it will then have leave to renew and press its application for relief in this case under an amended and the original bill herein.

Aug. 24 1907.

(Signed) EUGENE D. SAUNDERS, *Judge.*

608 *Decree.*

Filed August 26, 1907.

United States Circuit Court, Eastern District of Louisiana. In Equity.

No. 61, Baton Rouge Division.

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
versus
THE RAILROAD COMMISSION OF LOUISIANA.

This cause having come on at a former day to be finally heard and decided at Chambers by consent of Counsel for all parties in interest, upon the Bill of Complaint, Answer, Replication and the testimony, evidence and proofs as per Notes of evidence on file, and the cause having been argued by W. L. Granbery, Esq., for the Complainant, and by Walter Guion, Attorney General of Louisiana, and E. H. M'Caleb, Jr., Esq., for the Defendant; and having been submitted and taken under advisement; and the matter having been duly considered, it is now

Ordered, adjudged and decreed for the Reasons for Judgment on file, that the Injunction, as prayed for by the Complainant herein, do issue restraining and enjoining the Railroad Commission of Louisiana from putting or continuing in force and effect, so far as Complainant is concerned, the tariff of rates promulgated on August 6th 1906, and re-affirmed by order of October 10th, 1906, and designated as order No. 552, and restraining the said Railroad Commission from instituting or authorizing or directing any other to prosecute or institute any suit or suits, action or actions, against the Complainant herein for the recovery of any penalties under and by virtue of any of the provisions of the Constitution of Louisiana, as recited in Complainant's Bill of Complaint, by reason of the failure of Complainant and the officers and agents of the Complainant, or either of
609 them, from putting into effect or charging the rates specified in said order No. 552; and it is further ordered, adjudged and decreed that said tariff of rates specified in said Order No. 552 be cancelled and declared to be null and void and of no effect.

It is further ordered, adjudged, and decreed that the Defendant be condemned to pay all the costs of this proceeding.

New Orleans, La., August 26th, 1907.

(Signed) EUGENE D. SAUNDERS,
United States Judge.

610 *Order Referring Application of Complainant to Railroad Commission.*

Filed August 26, 1907.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division. In Equity.

No. 66.

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
versus
THE RAILROAD COMMISSION OF LOUISIANA.

This cause having come at a former day to be finally heard and decided at Chambers by consent of Counsel for all parties in interest, upon the Bill of Complaint, Answer, Replication and the testimony, evidence and proofs as per Notes of evidence on file, and having been argued by Counsel for the respective parties and taken under advisement; and the matter having been duly considered,

It is ordered, for the Reasons on file, that no action be taken upon Complainant's petition herein, and that Complainant be referred to the Railroad Commission who will consider and pass upon its application.

It is further ordered that in the event Complainant is dissatisfied with the ruling of the Commission, that it then have leave to renew and press its application for relief in this case under an amended and the original bill herein: and leave is reserved to Complainant to renew the motion for an injunction herein at any time.

New Orleans, La., August 26th, 1907.

(Signed) EUGENE D. SAUNDERS,
United States Judge.

611 *Petition and Order of Appeal.*

Filed August 26, 1907.

United States Circuit Court, Eastern District of La., Baton Rouge Division.

No. 61.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
RAILROAD COMMISSION OF LOUISIANA.

To the Honorable the United States Circuit Court for the Eastern District of Louisiana:

The petition of the Railroad Commission of Louisiana, defendants herein, respectfully represents:

That said Defendant petitioner, is aggrieved by the decree of this Honorable Court herein rendered and signed on the 24th day of

August 1907; that there is error to the prejudice of said defendant in the said decree, by which it will be irreparably injured.

Wherefore petitioner prays, that it be allowed an appeal from said decree, returnable to the Supreme Court of the United States according to law, upon giving bond to be fixed by the Court, and that the plaintiff, the Cumberland Telephone and Telegraph Company be cited to answer said appeal; and petitioner prays for general and equitable relief.

(Signed) WALTER GUION,
Attorney General of Louisiana,
and Solicitor for Defendant.

" E. H. McCALEB, JR.,
Of Counsel.

Order.

Let an appeal be granted petitioner as prayed for, returnable to the Supreme Court of the United States, at the City of Washington within thirty days, upon petitioner giving bond, with good and sufficient security in the sum of Three hundred Dollars *Dollars* conditioned as the law directs.

New Orleans August 26th, 1907.

(Signed) EUGENE D. SAUNDERS, *Judge.*

612 *Assignment of Errors.*

Filed Aug. 28, 1907.

United States Circuit Court Eastern District of La., Baton Rouge Division.

No. 61.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

Assignment of Errors.

Comes now the Railroad Commission of Louisiana Defendant, by its counsel and respectfully represents that it feels aggrieved by the proceedings and judgment and decree of the Court in the above entitled and numbered cause, and assigns error thereto as follows:

First. The Court erred in holding and finding, "that defendant's Order No. 552 reducing the rates authorized by previous order No. 488 is illegal and null, by reason of its being an arbitrary conjecture not based on investigation or the exercise of judgment and discretion applied to ascertained facts." Because the Court was without jurisdiction to, review the method or degree of method pursued by Defendant in fixing rates under order #552.

Second. The Court erred in finding that "Complainant does not now earn under the Tariff in Order #488 as much as 7% on its Louisiana business," or that "a net profit of 7% on the Louisiana investment would be only a fair return in a business of this character." Because, the court was without jurisdiction to decide as to what profits complainant is entitled to earn as a basis for fixing rates that being a matter exclusively within the province and cognizance of defendant provided Order #552 was not unreasonable or confiscatory and did not deprive complainant of its property without due process of law.

Third. The Court erred in holding that under Article 284 of the Louisiana Constitution of 1898, defendant had no power to adopt change or make reasonable and just rates, charges and regulations without full investigation into the facts before it establishes its rates, charges and regulations.

Fourth. The Court erred in finding that "in the oral argument it was conceded that it would be fair for complainant to earn 7% net dividend on its actual investment in Louisiana from the Louisiana business" and that "counsel for defendant seem disposed to admit that this would be a fair and reasonable profit" whereas no such admission was made by counsel, the oral statement of counsel being that for the sake of argument only, *argumenti gratia,* and not as an admission of a fact, that even if 7% would be deemed a fair return upon the fair value of the property in Louisiana, the rates established would not be unreasonable.

613 Fifth. The Court erred in holding, that said Article 284 of the Louisiana Constitution of 1898 by inference or otherwise, makes it mandatory and compulsory upon defendant to hear and determine complaints or to regulate the mode and manner of all investigations and hearings in the establishment of rates, orders, charges and other acts.

Sixth. The Court erred in holding that said Article 284 by inference makes it mandatory and compulsory on defendant "to summon and compel the attendance of witnesses and to compel the production of books and papers, to take testimony under commission and to punish for contempt."

Seventh. The Court erred in holding, that under Article 285 of the Louisiana Constitution of 1898, the Court could exercise supervisory control over the mode of procedure pursued by defendant in arriving at its (defendant's) conclusions and adopting Order #552 herein complained of. Because, the Court not being an appellate tribunal to correct supposed errors of defendant in its findings and orders, was without jurisdiction as to any matter or thing relating to the modes of procedure and the character and sufficiency of the evidence had before defendant.

Eighth. The Court erred in holding that the court is not limited to determine, that Order #552 was unreasonable or that it deprived Complainant of its property without compensation under the 14th Amendment, and in further holding that the entire controversy which was between the Complainant and defendant is transferred to the Court for its decision.

Ninth. The Court erred in finding that the fixing of rates under Order #552 by defendant was arbitrary and without a full investigation of the facts, or that defendant proceeded arbitrarily and without ascertaining the facts, or failed to exercise judgment or discretion.

Tenth. The Court erred in failing or refusing to hold, that defendant's order #552 was and is *prima facie* valid and that the burden of proof as to any supposed irregularities in the proceedings had before defendant was and is upon the Complainant, or
614 in holding that it was incumbent upon the defendant to sustain its orders by negative proof or affirmative proof to support the presumption in favor of Order #552.

Eleventh. The Court erred in failing or refusing to hold, that the annual sworn returns or reports made by Complainant to defendant was sufficient evidence to authorize the adoption of order #552 and afforded complainant an opportunity to be heard.

Twelfth. The Court erred in failing or refusing to hold, that after a re-hearing had been granted Complainant by defendant on October 10th 1906 on the matter of Order #552, and after having heard Complainant, that complainant's failure to offer any additional evidence or make any request for a continuance or to except to the mode of procedure precluded it from attacking the validity of said order #552 or to assert it to be an arbitrary exercise of power without previous or full investigation into and determination of the facts or from denying that an opportunity was afforded Complainant to be heard.

Thirteenth. The Court erred in refusing to hold that the matter in dispute does not exceed five thousand dollars, exclusive of interest and costs.

Fourteenth. The Court erred in finding, that "any reduction of the existing rate would be unreasonable and unjust."

Fifteenth. The Court erred in failing or refusing to hold, that the power conferred by Article 284 of the Louisiana Constitution involved legislative power, and that under said article, the fixing of rates is a legislative or quasi-legislative act, and accordingly, that order #552 cannot be interfered with by the judiciary, unless "clearly and beyond all doubt," it, as a whole, is "so plainly and palpably unreasonable" as to necessarily have the effect to deny complainant just compensation for its property.

Sixteenth. The Court erred in holding that Order #552 is unreasonable, because complainant "does not earn 7% on the Louisiana investment, and in failing to hold that complainant does receive more than a fair return on the value of its property in Louisiana.

615 Seventeenth. The Court erred in failing to or refusing to hold, that the sworn annual reports made by complainant to defendant during each of the years 1904, 1905 and 1906 and filed in evidence was competent evidence of the value of complainant's property during each of said years, or that complainant was thereby estopped either from asserting a different value in this proceeding or

from denying that the action of the defendant in fixing the rates under Order #552 based on said sworn valuation was unfair.

Eighteenth. The Court erred in holding, that the total cost of construction and not the real value of the property and the fair value of the services in themselves is the proper basis of ascertaining what are just rates.

Nineteenth. The Court erred in failing or refusing to hold, that the capital account included moneys derived from the issuance and sale of capital stock, bonds, surplus and reserve, and that the cost of additions and extensions was not properly charged to the whole of capital account without separating the cost of these additions and extensions that should have been chargeable separately to surplus and reserve. And further the Court erred in holding, that the burden of proof is upon defendant to show how much was taken from surplus and reserve to defray the cost of new additions and extensions.

Twentieth. The Court erred in failing or refusing to hold, that betterments, permanent improvements and reconstructions and contingent requirements and liabilities should be charged to surplus and reserve instead of being charged to annual operating expense for operations and maintenance.

Twenty-first. The Court erred in failing or refusing to hold, that the item of depreciation less reconstruction is not chargeable to expense account and not entitled to be deducted from annual gross revenue, thereby inflating the expense account and affecting the result so as to make it appear that complainant's annual net earnings are less than what they really and truly are.

616 Twenty-second. The Court erred in failing or refusing to hold that complainant is not entitled to strike off and deduct annually out of the revenues seven and one half per cent. of the entire cost of construction for depreciation, or seven and one half per cent. of the entire cost of construction for depreciation less reconstruction or permanent improvements.

Twenty-third. The Court erred in failing or refusing to hold that the net earnings are sufficient to entitle the public to a reduction of rates, and that out of such net earnings the payment of a fair dividend could be made under the operation of Order #552.

Twenty-fourth. The Court erred in failing or refusing to hold, that the evidence is insufficient and speculative, without any fair mode of ascertainment, as to what would the reduction in rates under order #552 if any, and in holding that the necessary operation and effect of Order #552 would be to reduce the rates so as to deprive complainant of a fair return on the value of its property.

Twenty-fifth. The Court erred in holding that the rates fixed by order #552 are unreasonable and that the enforcement of said order would deprive complainant of its property without compensation or without due process of law, in violation of the 14th Amendment.

Wherefore, the said Railroad Commission of Louisiana defendant, prays the Honorable court to examine and correct the errors assigned and for a reversal of the judgment and decree of the Honorable

Circuit Court of the United States for the Eastern District of Louisiana, Baton Rouge Division entered in the above entitled cause.

WALTER GUION,
Attorney General,
By E. H. McCALEB, JR.,
Its Solicitors.

617 *Bond.*

Filed August 27, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 61.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

Know all men by these presents, That we The Railroad Commission of Louisiana as principal and Overton Cade and E. H. McCaleb, Jr. as sureties, are held and firmly bound unto the Cumberland Telephone and Telegraph Company in the full and just sum of Three Hundred ($300.00) Dollars to be paid to the said Cumberland Telephone and Telegraph Company certain attorney, executors, administrators or assigns to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 26th day of August in the year of our Lord one thousand nine hundred and seven.

Whereas lately at a Session of the United States Circuit Court Fifth Judicial Circuit holding sessions in and for the Eastern District of Louisiana in a suit depending in said Court between The Cumberland Telephone and Telegraph Company and the Railroad Commission of Louisiana Numbers 61 of the Docket thereof, (Consolidated) Baton Rouge Division a decree final was rendered against the said Railroad Commission of Louisiana and the said Railroad Commission of Louisiana having on the 26th day of August taken an appeal to the Supreme Court of the United States from and to reverse said final decree having obtained an order of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the final decree in the aforesaid suit, and a citation directed to the said Cumberland Telephone and Telegraph Company citing and admonishing it to be and appear before the Supreme Court of the United States to be holden at the City of Washington within 30 *30* days from
618 the date thereof.

Now the condition of the above obligation is such that if the said Railroad Commission of Louisiana shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea

good, then the above obligation to be void, else to remain in full force and virtue.

(Sig.) RAILROAD COMMISSION OF LOUISIANA.
C. L. DE FUENTES, *Ch'r.* [SEAL.]
OVERTON CADE. [SEAL.]
E. H. McCALEB, JR. [SEAL.]

Sealed and delivered in presence of—
(Sig.) PETER STIFFT.
" E. HOWARD M'CALEB.

Approved by—
(Sig.) EUGENE D. SAUNDERS, *Judge.*

UNITED STATES OF AMERICA, *Eastern District of Louisiana, ss:*

Personally appeared Overton Cade and E. H. McCaleb, Jr., who being duly severally sworn depose and say that they are the sureties on the within bond that they the said Overton Cade — resides in Youngsville, La. Parish of Lafayette and E. H. McCaleb, Jr., who resides in the City of New Orleans, Louisiana and each are worth the full sum of Three Hundred ($300.00) Dollars over and above all each of his debts and liabilities and property exempt from execution.

(Sig.) E. H. McCALEB, JR.
" OVERTON CADE.

Subscribed and sworn — before me this 26th day of August 1907.
(Sig.) ARTHUR B. LEOPOLD,
[SEAL.] *Notary Public, Parish of Orleans.*

619 *Injunction to the Railroad Commission of La., Issued August 28, 1907.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

No. 61, Baton Rouge Division.

THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
THE RAILROAD COMMISSION OF LOUISIANA.

The President of the United States of America to the Railroad Commission of Louisiana, Greeting:

Whereas it has been represented unto us in our said Circuit Court on the part of the Cumberland Telephone & Telegraph Company in a Bill in Equity lately exhibited against you touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said Bill contained, you, the said Railroad Commission

of Louisiana your attorneys and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you absolutely refrain and desist from putting or continuing in force and effect, so far as Complainant is concerned, the tariff of rates promulgated on August 6th, 1906, and re-affirmed by order of October 10th, 1906, and designated as order No. 552 and from instituting or authorizing or directing any other to prosecute or institute any suit or suits, action or actions against the Complainant herein for the recovery of any penalties under and by virtue of any of the provisions of the Constitution of Louisiana as recited in Com-
620 plainant's Bill of Complaint, by reason of the failure of Complainant and the officers and agents of the Complainant, or either of them, from putting into effect or charging the rates specified in said order No. 552, and that you remain so inhibited and enjoined until the further order of our said Court in the premises.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States at the City of New Orleans, this 28th day of August in the year of our Lord, 1907.

[SEAL.] (Signed) H. J. CARTER, *Clerk*,
"
By E. M. FULLER,
Deputy Clerk.

Marshal's Return on Injunction.

Filed Aug. 30, 1907.

Received by U. S. Marshal New Orleans, La., Aug. 28/07, and on the 29th day of the same month and year I served copy of this writ on the Rail Road Commission of Louisiana by handing same to the Chairman thereof Mr. C. L. De Fuentes in person in New Orleans, La.

(Signed) VICTOR LOISEL,
U. S. Marshal,
By T. I. GALBRETH, *D'y.*

621 *Stipulation, Sept.* 6, 1907.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 61.

CUMBERLAND TELEPHONE AND TELEGRAPH CO.
vs.
RAILROAD COMMISSION OF LOUISIANA.

Stipulation.

It is hereby stipulated by and between the defendant Railroad Commission of Louisiana and complainant Cumberland Telephone

and Telegraph Co. That the following documents, maps and printed pamphlets offered and filed in evidence in this cause be annexed to the transcript of appeal and made part of said transcript without the Clerk being required to copy the said documents etc., in the said transcript, the said documents to go up in the original, viz.: Exhibits No. 1 and Exhibit No. 1 made part of the testimony of H. Blair Smith; D 5; D 6; D 7; D 1; Exhibit No. 1 annexed to the testimony of J. G. Wray; D 18; D 19; D 20; Exhibit No. 3; Exhibit No. 1 annexed to deposition of Caldwell; Exhibit No. 3 annexed to deposition of Caldwell; printed opinion of Louisiana R. R. Commission case No. 79 not marked; and Tariff sheet marked Tarifl 1 A offered by plaintiff.

(Signed) WALTER GUION,
Att'y Gen'r'l,
" E. H. McCALEB, Jr.,
Solicitor for Defendant.
" WM. L. GRANBERY,
Sol. for Plaintiff.

622 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Henry J. Carter, Clerk of the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, Do Hereby Certify, That the foregoing 621 pages contain and form a full, complete, true and perfect transcript of the Record and Proceedings had, and assignment of errors, together with all the evidence adduced on the trial of the case of The Cumberland Telephone & Telegraph Company *vs.* The Railroad Commission of Louisiana No. 61 of the Docket of the Baton Rouge Division of said Court, transferred to No. 13473 of the Docket of the New Orleans Division of said Court: *except* the Exhibits mentioned in the Stipulation of Counsel copied at page 621 of the Transcript, which are transmitted in the originals along with the Transcript as per said Stipulation.

Witness my hand and the seal of said Court, at the City of New Orleans, this 13th day of September A. D., 1907.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District, La.]

H. J. CARTER, *Clerk.*

I, David D. Shelby United States Circuit Judge for the Eastern District of Louisiana, do certify, that Henry J. Carter, whose name is signed to the above certificate as Clerk of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, was, at the time of signing said certificate, and is now the Clerk of said Court: That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such Clerk.

Given under my hand, at the City of Huntsville, in said Circuit this 14 day of September A. D., 1907.

DAVID D. SHELBY,
U. S. Circuit Judge.

623 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the Cumberland Telephone and Telegraph Company, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to an Appeal filed in the Clerk's Office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, wherein the Railroad Commission of Louisiana is Appellant and the Cumberland Telephone and Telegraph Company is Appellee to show cause, if any there be, why the judgment rendered against the said Railroad Commission of Louisiana as in said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 26 day of August in the year of our Lord one thousand nine hundred and seven.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District, La.]

(Sig.) EUGENE D. SAUNDERS, *Judge.*

CLERK'S OFFICE.

A true copy.

H. J. CARTER, *Clerk.*
By E. M. FULLER,
Deputy Clerk.

New Orleans, Louisiana, August 28, 1907.

Received by U. S. Marshal, New Orleans, La., Aug. 28/07.

On this 29th day of August, 1907, before the undersigned authority personally came and appeared T. I. Galberth, Deputy United States Marshal for the Eastern District of Louisiana, known to me as such, who being duly sworn deposes and says that he, affiant did on August 29, 1907 serve this writ on the Cumberland Telephone and Telegraph Company by handing same to E. S. Powell, Esq., superintendent of the New Orleans Division of said Co., in person, in the office of said Company, in the City of New Orleans, Louisiana.

T. I. GALBRETH,
Deputy U. S. Marshal, E. Dist., La.

Sworn to and subscribed before me on this 29th day of August, 1907.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District, La.].

E. M. FULLER,
Deputy Clerk.

[Endorsed:] 1816—E. H. McCaleb, Jr., W. Guion. E. Return. United States Circuit Court, Eastern District of Louisiana. No. 61 Baton Rouge Division. The Cumberland Telephone & Telegraph Company *vs.* The Railroad Commission of Louisiana. Copy of Citation of Appeal. Marshal's return. No. —. U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division. Filed Aug. 29, 1907. E. M. Fuller, Dy. Clerk.

Endorsed on cover: File No. 20,860. E. Louisiana C. C., U. S. Term No. 457. The Railroad Commission of Louisiana, appellant, *vs.* Cumberland Telephone and Telegraph Company Filed September 23d, 1907. File No. 20,860.

Office Supreme Court, U. S.
FILED.
MAR 2 1908
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. [redacted]182.

RAILROAD COMMISSION OF LOUISIANA,
APPELLANT,

versus

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, APPELLEE.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

Comes the Appellant and moves the Honorable Court to advance this cause upon the docket and hear it, at as early day as the convenience of the Court will permit, and for the reasons therefor mover states:

(1) That the cause involves the validity of an order of the Louisiana Railroad Commission adopted on August 6, 1906. Said Commission is a State Board estab-

lished by the Constitution of Louisiana of 1898 (Articles 283 to 286), and having exclusive powers delegated to it by the people of Louisiana for governmental regulation and control as to service and rates of quasi-public corporations and those engaged in furnishing conveniences for the public within the limits of the State. Under the powers so delegated, it adopted and issued a certain order No. 552, fixing maximum rates for toll line telephone service throughout the State to be charged by the Appellee, the Cumberland Telephone & Telegraph Company. The said Company being dissatisfied with said order, filed its bill in equity in the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, docketed as No. 61, praying for a nullity of said order on the ground of its being unreasonable and confiscatory, and for an injunction against the Commission, restraining the enforcement of said Order No. 552. That after answer and issue joined and pending the taking of testimony, a second bill in equity was filed by Appellee, in the same Court, and docketed as No. 66, praying for leave to advance rates on submarine cable service, for the abolition of special night and Sunday toll-rates, double exchange service and the sale of toll coupons at a discount from the regular rates, and for an injunction against the Commission from interfering with the Company in the premises. The two causes were ordered consolidated by the Court, and after answer was filed and issue joined, and after taking testimony, said consolidated causes were submitted to the Court for judgment, whereupon a decree was entered in favor of the Company, as prayed for in the first suit No. 61, decreeing the nullity

of Order No. 552, as unreasonable and confiscatory, and perpetuating the injunction asked for. From said judgment an appeal was taken to this Honorable Court and duly perfected.

Mover further shows that in cause No. 66 the Circuit Court withheld action, referred the subject matter back to the Commission for decision, and ordered the separation of said consolidated cases. That in accordance with the order of reference, the Commission granted the request of the Company as to the abolition of night and Sunday rates, the double exchange service and discontinuance of sale of toll coupons, but refused to advance the rates on submarine cable service. Because of said suit and the injunction issued and perpetuated, restraining the execution of Order No. 552 by the decree herein appealed from, mover has been hampered and will continue to be hampered in the exercise of the powers delegated to it by the people of Louisiana under the Constitution, in making, changing or reducing rates for toll line service, until the final disposition of this cause. About eighteen months have elapsed since the adoption of said Order No. 552, and unless this appeal is advanced for hearing, heard and decided at this term, more than two years shall have passed. Meanwhile no relief in toll line rates for the people of Louisiana can be had, as mover would be in contempt of the Circuit Court, and in contempt of its opinion and decree, by making, changing, modifying or reducing any toll line rates. That the fixing and establishment of rates is universally recognized as being subject to change, according to changing conditions, in that what would be a reasonable rate for one year or at a certain

time or under certain circumstances, would not be in another year, at another time or under other circumstances.

And mover shows, that as appears from the map offered in evidence and marked D1 (R. p. 272), the Appellee, Cumberland Telephone & Telegraph Company, save as to a small portion of the State, has no competition in the telephone business in Louisiana, and has no competition along the routes and at the points of its lines and exchanges in the State. That the toll line service in Louisiana is of considerable importance and proportions, and the demand therefor constantly increasing, as appears from the Record herein. It has become a public necessity, the people residing on the toll routes and at the exchange centers of said Cumberland Telephone Company have no other means of telephonic communication or convenience for toll service and mover believes, and so believing avers that a continuance of the existing charges are oppressive and will continue to be until the final determination of this cause.

And mover finally shows that the issues herein involve questions of great interest and pressing importance and concern to the public and the operations of the Government of the State of Louisiana will be embarrassed by delay, so long as they remain undetermined by the Court.

Respectfully submitted,

WALTER GUION,
Attorney General of Louisiana.

E. HOWARD M'CALEB, JR.,
Of Counsel for Appellant.

To George Denegre, J. P. Blair, Victor Leovy and W. L. Granbery, Attorneys for Appellee in the above entitled cause:

You are hereby notified that the Appellant in the above named cause will, on the 2nd day of March, 1908, on the meeting of the Supreme Court of the United States, on that day, or as soon thereafter as counsel can be heard, submit for the consideration of the Court the foregoing motion.

Walter Guion Atty Gen
E. Howard McCaleb Jr
Attorneys for Appellant.

E. H. M'CALEB, JR., being duly sworn, deposes and says:

That on the 26th day of February, 1908, he served copies of the foregoing motion to advance, upon Messrs. George Denegre, Joseph P. Blair and Victor Leovy, Attorneys for the Cumberland Telephone & Telegraph Company, by delivering the same to Victor Leovy Esq., its counsel, in the Denegre Building, in the City of New Orleans.

Sworn to and subscribed before me this 24th day of February, 1908.

E. H. McCaleb Jr

Anton B. Seeger
Notary Public

Supreme Court of the United States

OCTOBER TERM, 1907.

No. 457.

RAILROAD COMMISSION OF LOUISIANA,
Appellant,

versus

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

Comes now the said Railroad Commission of Louisiana, appellant, by Walter Guion, Attorney General of Louisiana, and E. Howard McCaleb, Jr., of counsel, and suggests dimunition of the record in this cause, in this, to-wit:

First. That as appears from the transcript of the record duly printed, the proceedings carried up by this ap-

peal were originally instituted on October 19, 1906, and docketed as No. 61 (Baton Rouge Division) of the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana, and numbered also 13,473 New Orleans Division. That the bill of complaint prayed for an injunction restraining the execution of mover's order No. 552 relative to toll rates for telephone service, and further praying that said Order No. 552 be declared null and void as against complainant. (R. pp. 1 to 6.) That answer and replication were duly filed and evidence of complainant taken, up to May 11, 1907. (R. p. 96.)

Second. That on July 24, 1907, complainant and appellee filed a second bill, which was docketed and known as No. 66 in the United States Circuit Court, Fifth Circuit and Eastern District of Louisiana, praying for an injunction against the Railroad Commission of Louisiana, your mover and appellant, to the end that mover be enjoined from in any manner interfering with complainant and appellee in abolishing the half rate for the night and Sunday telephone toll service, and in abolishing double exchange service and sales of coupons at reduced rates, and in making extra charges for cable service, etc. (R. pp. 19 to 33.)

Third. That a motion for injunction and order to show cause in said suit No. 66 was filed on July 24, 1907 (R. p. 47), and was heard on July 30, 1907, whereupon an order was entered disallowing said order to show cause why a preliminary injunction should not issue and consolidating said suit No. 66 with suit No. 61, as follows:

> "It is hereby ordered that this cause be consoli-
> "dated with the cause already pending in this Court,

"to-wit: No. 61, between the same parties, and both "causes will be heard together and the proof here- "tofore taken and the proof to be hereafter taken, "will be treated as evidence in both cases."
(See Record p. 126.)

And thereupon, in compliance with said order, your mover and appellant filed its answer to said bill No. 66 (R. p. 127), to which a replication was duly filed, and evidence and testimony taken in said causes so consolidated.

Fourth. That after the closing of the evidence by both sides, said consolidated causes came up for final hearing on August the 19th, 1907 (R. p. 310), and after submission to the Court, two separate decrees were entered and filed on August 26, 1907 (R. pp. 324-325), the first decree in suit No. 61 giving judgment for complainant as prayed for in its bill, and declaring mover's order No. 552 null and void, and enjoining mover from continuing or putting in force and effect, so far as complainant is concerned, the tariff of rates designated as order No. 552. The second decree in suit No. 66, the Court withheld action and referred complainant and appellee back to the Railroad Commission, your Mover, so that mover might consider and pass upon complainant's application, and further provided, that in the event complainant is dissatisfied with the ruling of the Commission that it have leave to renew and press its application for relief under an amended and the original bill, together with leave to renew the motion for an injunction at any time. (R. p. 325.)

Fifth. That on the same day, to-wit, August 26, 1907, an order was made separating the above consolidated causes for the purposes of the decrees therein. (R. p. 310.)

That thereupon, on August 28, mover was allowed an appeal from the final decree in No. 61 (R. pp. 325, 326) upon giving bond which was duly furnished and accordingly mover filed its assignment of errors and otherwise perfected its said appeal to this Honorable Court.

Sixth. That in compliance with the decree in No. 66, and on or about September 11, 1907, mover did consider and pass upon complainant's application, and granted the relief prayed for in its original bill in No. 66, and accordingly modified its order No. 552 by abolishing the night and Sunday half-rates therein fixed for telephone toll service, but denying and refusing to give its sanction to increasing the rates for sub-marine cable service, as will appear from mover's order No. 753, a copy of which is hereto annexed and made part hereof marked Exhibit "A".

Seventh. That in conformity with the interlocutory decree entered in suit No. 66, subsequent proceedings were had by amended bill, wherein it was alleged that the Railroad Commission, your mover, had granted full relief in so far as the abolition of the night and Sunday half-rates for toll service, so as to make them the same as the day rates, were concerned, but that complainant was entitled to advance its rates for sub-marine cable service, which advance was not sanctioned by mover's order No. 753. That, after hearing, the Circuit Court then *ex-proprio motu* dismissed the original and amended

bills in No. 66 for want of jurisdiction, and said complainant and appellant has notified your mover through its counsel that it does not desire to appeal from said final decree dismissing its bill in No. 66.

Eighth. That in said subsequent proceedings taken by complainant it filed as part thereof a duly certified copy of said order No. 753, in said suit No. 66, which said order had reference to the issues contained in the consolidated cases Nos. 61 and 66, now No. 457 of the docket of this Honorable Court, October Term 1907. And now mover shows, that as will appear from the transcript of record herein, suit No. 61 involves the validity or reasonableness of an order of the Railroad Commission known as order No. 552, establishing maximum telephone rates for toll service, which said rates in order No. 552 complainant claims to be confiscatory and in effect reducing its gross revenues about $40,000.00 per annum, estimated, and that said order No. 552 did fix the night and Sunday rate at one-half the day rate for telephone service throughout the State of Louisiana. That suit No. 66, among other things not material, involved the validity of an order of the Railroad Commission, withholding action on complainant's application for an abolition of the half rates for Sunday and night telephone toll service, which if granted, is admitted by complainant to yield an increase in its gross revenues of $40,233 per annum, based on the present schedule of rates. (R. p. 27.)

Ninth. That, as will appear from the transcript of record herein and the evidence taken after the consolidation of said causes Nos. 61 and 66, said causes involved

the same issues, and the testimony and evidence given had for its consideration the proposed action of the Railroad Commission in abolishing or refusing to abolish the night and Sunday rates for toll service then in operation, so as to make them the same as the day rates, in that, if said night and Sunday rates were abolished, the alleged reduction in revenue set up in suit No. 61 (by the rates established under order No. 552, then enjoined and alleged to be unreasonable and void), would not be as great and may or may not be confiscatory and unreasonable. That further testimony in said causes consolidated has special reference to the effect of the abolition of the night and Sunday rates under order No. 552 upon the maximum rates as a whole, established by that order.

Tenth. Now mover further shows, that the order entered August 26, 1907, separating said consolidated cases was made and entered only "for the purposes of the decrees therein" (R. p. 310), and did not entirely vacate the order of consolidation entered on July 30, 1907, which provided that "the proof heretofore taken and the proof to be hereafter taken, will be treated as evidence in both cases" (R. p. 126), in consequence whereof all the proof taken up to the final decree dismissing the bills in suit No. 66, as well as order 753 abolishing the night and Sunday rates, all of which is omitted in the transcript of this cause, should form part of the same.

Eleventh. In the alternative, and in case all the evidence taken and the proceedings had in said consolidated cases Nos. 61 and 66, Baton Rouge Division, transferred to No. 13,473, New Orleans Division of the United States Circuit Court for the Fifth Circuit and Eastern

District of Louisiana, up to the final decree in No. 66, should be determined by your Honors not to form part of the record in said consolidated causes, and which is omitted from this transcript, then your mover shows that order No. 753 above referred to and made part hereof and filed in said consolidated cases, after the final decree rendered in No. 61, and before the final decree rendered in No. 66, consolidated with No. 61, is not new evidence. That mover's said order is tantamount to a modification of the order No. 552, enjoined by the final decree in suit No. 61, and that the said consolidated case has reference thereto. That said order No. 753 is so interwoven with all the issues, evidence and testimony presented in said consolidated case and in suit No. 61, cognate and germane to order No. 552, for which reason and in the furtherance of justice and in order to enable this Honorable Court to obtain further information in respect to the matters now before your Honors for adjudication, said order No. 753 should therefore form a part of this record.

(Young vs. U. S. 258; 94 U. S. 259; U. S. vs. Adams, 9 Wall. 661, 663; Barton vs. Petit & Bayard, 7 Cranch, 288.)

Twelfth. Your mover further shows that for special cause this suggestion of diminution of record and motion for certiorari could not have been earlier presented, because the final decree, dismissing the bill in No. 66, was not rendered until November 11, 1907, and that the application for a rehearing was not refused until December 2, 1907, up to which time the complainant made known to your mover that it was its intention to appeal to this

Honorable Court from the final decree dismissing said bill, but that on or about the 10th day of December, 1907, said complainant, through its counsel, notified your mover, through mover's counsel, that complainant abandoned its right to appeal from said final decree in No. 66.

WHEREFORE, the Railroad Commission of Louisiana, Appellant, moves this Honorable Court under rule 14 to award a writ of certiorari, to be issued and directed to the Judges of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, commanding them, that searching the record and proceedings in said consolidated cases Nos. 61 and 66, they forthwith certify to this Court those parts of said records so omitted as aforesaid, consisting of the proceedings had and taken since August 26, 1907, up to the final decree, dismissing cause No. 66 in said consolidated cases, Nos. 61 and 66, Baton Rouge Division, and No. 13,473, New Orleans Division of said Circuit Court; or, in the alternative, and under rule 14 to award a writ of certiorari to be issued and directed to the Judges of said Circuit Court, commanding, that searching the records and proceedings in said cause, they forthwith certify to this Court order No. 758, issued by the Railroad Commission of Louisiana, and filed in said consolidated cases, and omitted as aforesaid.

WALTER GUION,
Attorney General of Louisiana,

E. HOWARD M'CALEB, JR.,
Counsel for Appellant.

E. H. M'CALEB, JR., being duly sworn, deposes and says:

That all the facts stated in the foregoing motion for certiorari and diminution of record are true, and the reason for the delay for presenting said motion is, that after the final decree, dismissing the original and amended bill in suit No. 66, consolidated with suit No. 61, affiant was informed on or about the 2d day of December, 1907, by Mr. Victor Leovy, of counsel for complainant, that it was the complainant's intention to appeal to this Honorable Court from said final decree, rendered in suit No. 66, and that on December 10, 1907, counsel for complainant notified counsel for mover, that complainant abandoned its right to appeal from said final decree in suit No. 66. E. Howard McCaleb Jr

Sworn to and subscribed before me this 13th day of December, A. D. 1907.

Arthur Leibel

Notary Public for the Parish of Orleans, State of Louisiana.

Messrs. George Denegre, Joseph P. Blair and Victor Leovy, Attorneys for the Cumberland Telephone & Telegraph Co., Denegre Bldg., New Orleans, La.:

Please take notice that the annexed motion for certiorari and suggestion for diminution of record, directed to the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana, requiring said Court to certify to the Supreme Court of the United States, the parts of the record of said consolidated cases, Nos. 61 and 66, omitted from the transcript of the record, as

set forth in said suggestion of diminution of record and motion for certiorari, will be presented to the Supreme Court of the United States, at the Capitol at Washington, on the 16th day of December, 1907, at twelve o'clock noon, or as soon thereafter as counsel can be heard.

Dated at New Orleans, La., December 12, 1907.

E. HOWARD M'CALEB, JR.,

Attorney for the Railroad Commission of Louisiana, Appellant.

E. H. M'CALEB, JR., being duly sworn, deposes and says:

That on the 13th day of December, 1907, he served copies of the foregoing motion for certiorari and suggestion of diminution of record, upon Messrs. George Denegre, Joseph P. Blair and Victor Leovy, Attorneys for the Cumberland Telephone & Telegraph Company, by delivering the same to Mr. Victor Leovy, its counsel, in the Denegre Building, in the city of New Orleans.

Sworn to and subscribed before me this 13th day of December, A. D. 1907.

Notary Public for the Parish of Orleans, State of Louisiana.

EXHIBIT A.

RAILROAD COMMISSION OF LOUISIANA.

ORDER NO. 753.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY,

Exparte. No. 824.

Toll Rates Between the Hours of 6 p. m. and 6 a. m., and on Sunday; Coupon Toll Books, Double Exchange Service and Service Through Submarine Cables.

Heard September 10, 1907.

Appearances: W. L. Granberry, Esq., Counsel.

On May 27, 1907, the Cumberland Telephone and Telegraph Company filed with the Commission a petition asking that it be allowed to abolish the reduced rates it was then charging for toll messages sent after 6 o'clock in the evening and before 6 o'clock in the morning, and on Sundays, on the following grounds and for the following reasons:

"It has become apparent that a large part of the friction between the Company and its patrons results from a congestion of the toll business from 6 in the evening until about 9 at night, for the reason that the business which should properly be handled between 3 and 6 in the evening is held back until the half rate takes effect, and then the lines are so burdened that it not only results in delay to the patrons, but results in many mistakes, and

is a serious menace to the properly and orderly handling of the business. It also results in inconveniencing and delaying patrons of the Company in handling the regular business which should properly be handled between 6 and 9 at night.

"The expense of maintaining the business after 9 o'clock at night is out of all proportion to the receipts, for the reason that the Company is required to keep the offices open, using light and fuel, and always having on duty long distance operators to handle merely emergency calls that are put in after 9 o'clock at night, and in justice to the Company the rates for that class of service should be double what they ordinarily are, but by abolishing the half rates at night and Sundays, it is believed by the management that the business can be properly handled at the usual day rate.

"Your attention is called to the fact that the expense of conducting the telephone business generally, has enormously increased, and the service rendered by the Company has largely increased in the last two or three years. The result is that the margin of profit is gradually diminishing, and the question of providing new facilities has become a most serious one with the management. Indeed, it is doubtful whether the Company can to-day secure capital to take care of the normal increases in the business without a general raise in all rates.

"The management believes that the abolition of the half rate at night will somewhat increase the receipts without a corresponding increase in expense, and will inevitably result in a much more satisfactory service to the public, in that it will result in an even distribution

of the business throughout the twenty-four hours of each day, and enable the employes of the Company to properly handle the business.

"This application is made with a view of abolishing these night rates over the entire system, and is not intended to apply alone in the State of Louisiana."

In the same petition the Cumberland Telephone and Telegraph Company asks to be allowed to discontinue the sale of "Coupon Toll Books", which were books sold to large users of toll line service at a discount from the regular rates, and also to be allowed to discontinue "double exchange service", by which one subscriber, living between two exchanges, might be connected with both exchanges, by the payment of a mileage charge of forty cents per mile, in addition to the authorized exchange rate at the nearest exchange, and thereby receive unlimited use of the toll line betwen the two exchanges, while others using the same wires and receiving the same service pay the regular toll line charges.

These two later propositions have previously been considered by this Commission, and finding no reasonable grounds upon which the Telephone Company could be required to continue the two classes of service mentioned, and believing them to be purely voluntary arrangements, and not in any general use, or of any material benefit to the public, and believing further, that insofar as the "double exchange service" is concerned, it is discriminatory, unjust and unfair, for the reason that the parties enjoying such service pay less for the use of toll lines between exchanges than those who use the toll lines direct; and, also, finding further, upon full, careful and

complete investigation made in this case, that the extent to which such service is used in the State is trifling, and of no importance (there being but two parties in the State enjoying double exchange service, the revenue from which is less than $175.00 per year), the application to discontinue the sale of coupon toll books, and the double exchange service, has been allowed.

Subsequently to the filing of its petition to abolish night and Sunday toll rates the Cumberland Telephone and Telegraph Company filed with the Commission another petition, asking that it be allowed to advance the rates through submarine cables, both for exchange service and on toll messages. Upon motion of petitioners the two cases were consolidated and considered for the purpose of investigation, as one.

When these petitions were filed with the Commission there was pending in the United States Circuit Court for the Eastern District of Louisiana a suit filed by the Cumberland Telephone and Telegraph Company to set aside an order of the Commission, entered August 6, 1906, and made final on October 10, 1906, which sought to reduce the toll line rates of the Cumberland Telephone and Telegraph Company in the State of Louisiana, the Commission, believing, after a full and careful investigation of the annual reports made to it by the said Telephone Company, and after further investigation made by it, that the rates which the Cumberland Telephone and Telegraph Company were charging for toll line service were excessive, unreasonable, and extortionate, and should be reduced.

Believing that any action taken by it upon the appli-

cation of the Cumberland Telephone and Telegraph Company to advance night and Sunday toll rates during the pendency of this suit would be prejudicial to its interests, and the interests of the people of the State of Louisiana, the Commission declined to take any action on the Cumberland Telephone and Telegraph Company's petition.

The Commission's position in the premises was recognized by the Court to be reasonable, in a proceeding before the United States Circuit Court for the Eastern District of Louisiana, in which the Cumberland Telephone and Telegraph Company sought an injunction restraining the Commission from interfering with it in increasing its night and Sunday rates, by a refusal on the part of the Court to grant the injunction. At the same time an order was entered by the Court, allowing both parties to the proceeding, ten days within which to complete the taking of testimony and filing of evidence. At the time this order was entered an understanding was had before the United States Circuit Court, between counsel on behalf of the Cumberland Telephone and Telegraph Company and the Attorney General, and E. Howard McCaleb, Jr., counsel representing the Railroad Commission of Louisiana (admission being made by the Cumberland Telephone and Telegraph Company to the effect that said Company has had full opportunity to be heard, and a full and complete investigation has been made by the Commission, relative to the charges for toll service, for the abolition of night and Sunday rates, and for an increase in the rates and charges for such exchange service and toll line service as may be rendered through sub-

marine cables), that as soon as possible after a decision was reached by the Court upon the merits of the case pending, in which the reasonableness of the rates for toll line service was at issue, the Commission would meet and, after due notice given, and full investigation having been made of the facts, decide the petition of the Cumberland Telephone and Telegraph Company, upon the issues set forth hereinabove.

Accordingly, on September 10, 1907, the Commission, being in session, accorded a hearing to the Cumberland Telephone and Telegraph Company, through its general counsel, W. L. Granberry, Esq., and finds the following:

NIGHT AND SUNDAY TOLL RATES.

(1) That the night and Sunday service rendered by the Cumberland Telephone and Telegraph Company is precisely the same as the service rendered by it during the day time; that, while the rates are termed "night and Sunday" rates, they are in reality charged on messages which are sent in the day time, at least, for a good portion of the year; that a more arbitrary division of time, by which one party, sending a message at 5:59 p. m., is charged double what would be charged another party sending a message of like character at 6:10 p. m., is not sound in reason, nor justified by any conditions which exist.

(2) That, while the reduced rates for "night and Sunday" toll service were put in voluntarily by the Company, in order to induce business during what are considered dull hours, they have had the effect of causing business to be held back during the afternoon hours,

until 6 o'clock, when an avalanche of calls is thrown upon the Company, and a congestion of business follows, which not only renders prompt and satisfactory service impossible, but causes extra expense in handling the business during the rush, by reason of the Company's having to employ a portion of its day force at additional compensation in order to handle the business.

(3) That the service performed at night and on Sundays must, in order to be satisfactory, be as prompt and efficient as that performed during the day time; that the party desiring to converse over a telephone line, with another party in a distant place, demands a reply with as little delay as possible, and when his party is secured he holds his conversation, gets his answer, and after the payment of the tolls, the transaction is ended. Should the party desired not be located, the applicant for the service has not been at any expense save the annoyance of waiting for a reply. Night telegraph service differs materially from night telephone service. If a night telegram is sent the telegram is delivered to the operator with instructions to send it as a night telegram. The sender knows that the message will not be delivered until the following morning, and the telegraph company sends the message at its convenience, during the dull hours of the night. If immediate delivery of a telegram is desired day rates must be paid.

On messages of ten words or less the minimum charge of twenty-five cents is assessed, whether the message be a "day" or a "night" message. The difference between this service and the service rendered by a telephone company is obvious.

(4) That reduced rates for "night and Sunday" toll line service have been abolished over the entire territory in which the Cumberland Telephone and Telegraph Company operates, as well as in the territory operated by the Southern Bell Telephone Company, and, in fact, over the entire country, and has been abolished since August 1, 1907, on interstate messages to and from points in Louisiana; that following the increase of the "night and Sunday" toll line rates to the same figures as the day rates there was an immediate cessation of the congestion which followed after 6 o'clock, and that the service of the telephone company has accordingly been much improved.

(5) The Commission further finds that no other telephone company in Louisiana has reduced its rates for night and Sunday service, and, in fact, but few of them furnish night service in their toll lines, which, however, it is only fair to say, are few in number and not extensive. At the same time, there is no reason why there should be discrimination against one telephone company in the adjustment of toll rates.

SERVICE THROUGH SUBMARINE CABLES.

With regard to the application of the Cumberland Telephone and Telegraph Company to be allowed to advance its exchange rates and its toll line rates whenever it is necessary to render such service through submarine cables, the Commission finds:

(1) That, while it is true that there are many navigable streams in the State of Louisiana, which must be crossed by submarine cables, chief of which is the great

Mississippi river, there is no more reason why a telephone company should be allowed to make an additional charge for service through submarine cables, than there is that a railroad company should charge additional rates because it is necessary to build and maintain extensive trestles or expensive bridges in order to complete its line. A telephone company building its lines will necessarily meet obstacles which must be ingeniously overcome, and without which no complete system of telephone lines could be constructed. When these obstacles are overcome by the laying of cables, or the building of towers and the stringing from them of cables, these media and structures become inseparable elements of the completed system, and are subject to no special exemptions or additional rates by reason of the fact that they are more perishable than other portions of the same structure. All the important cities in Louisiana are situated on the banks of rivers which must be crossed by submarine cables, and the bulk of the toll line business in Louisiana goes through these cables. While the Company's application is restricted to submarine cables crossing the Mississippi river, it must be remembered that Louisiana's metropolis is located on the east bank of the river, as is also its Capital, and a greater portion of the State lies west of the river, and the business to and from these cities is always heavy. The Commission finds no reason sound in principle or good in judgment why there should be an advance in the rates for service through submarine cables, simply because experience has shown them to be an expensive part of the system to maintain.

The premises considered, and the Commission reserving

all the rights and defenses set up and involved in suit No. 61 of the docket of the United States Circuit Court for the Eastern District of Louisiana, and in no manner waiving, but specially insisting on the same, it is

ORDERED, That the application of the Cumberland Telephone and Telegraph Company for permission to abolish the "night and Sunday" toll line rates in the State of Louisiana, be and the same is hereby granted, effective October 1, 1907.

It is further

ORDERED, That the application of the Cumberland Telephone and Telegraph Company to be allowed to advance the rates for exchange and toll line service rendered through submarine cables crossing the Mississippi river be, and the same is hereby, denied.

By order of the Commission.

Baton Rouge, Louisiana, September 13, 1907.

C. L. de FUENTES, Chairman.
OVERTON CADE,
J. J. MEREDITH,
Commissioners.

(Seal.)

W. M. BARROW, *Secretary.*

Office Supreme Court, U. S.
FILED
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JAMES H. McKENNEY
CLERK

Supreme Court of the United States

NO. 182.

OCTOBER TERM, 1908.

THE RAILROAD COMMISSION OF LOUISIANA,
APPELLANT,

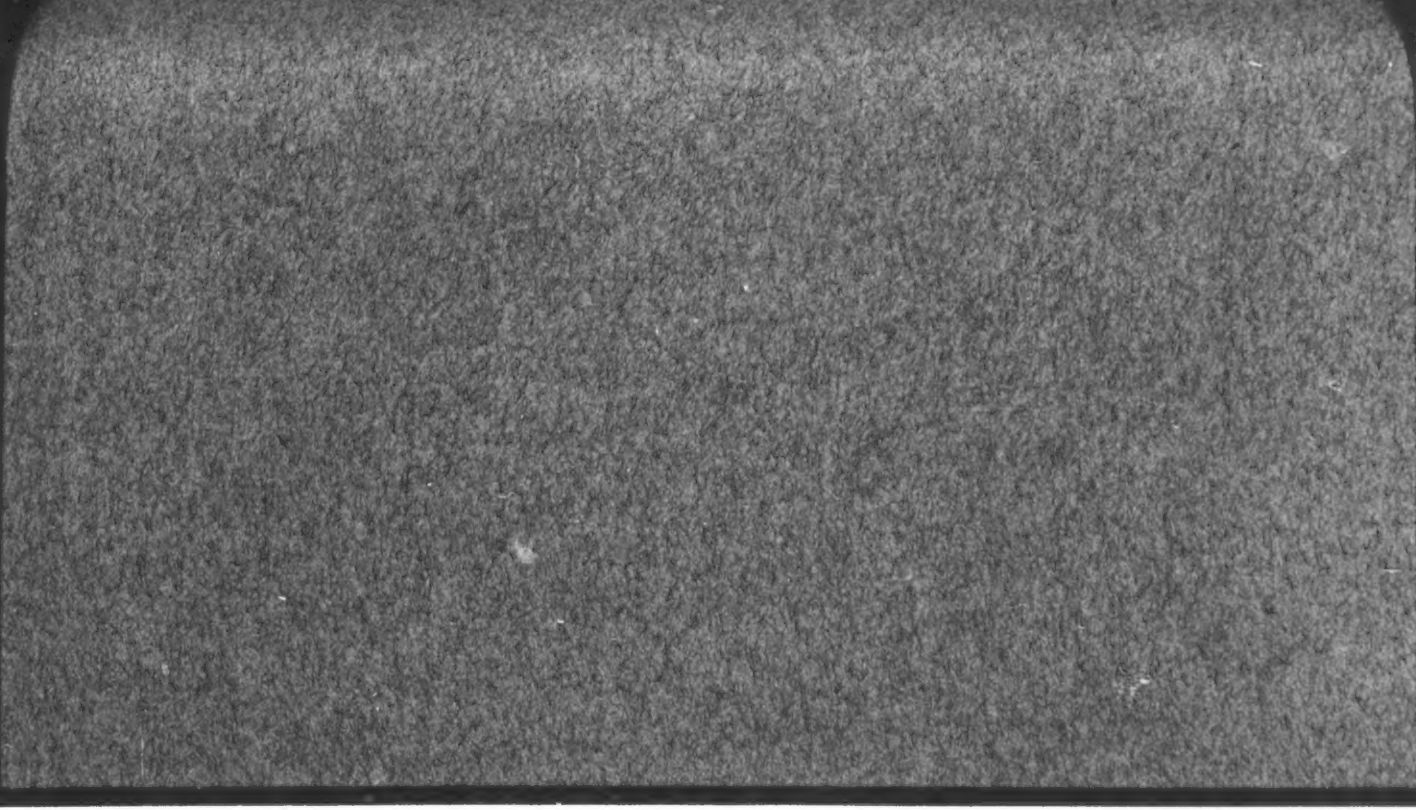
vs.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,
APPELLEE.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF AND ARGUMENT ON BEHALF OF APPELLEE.

DENEGRE & BLAIR,
WILLIAM L. GRANBERY,
Solicitors.



Supreme Court of the United States

OCTOBER TERM, 1908

No. 182

THE RAILROAD COMMISSION OF LOUISIANA,

Appellant.

vs.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,

Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF AND ARGUMENT ON BEHALF OF APPELLEE.

May it please Your Honors:

This appeal involves the *reasonableness* of an order of the Railroad Commission of Louisiana reducing the rates for "long distance telephone messages" in the State of Louisiana. The Circuit Court held that the order of the Commission was unreasonable and enjoined its enforcement,[1] from which the Railroad Commission has prosecuted this appeal.

STATEMENT.

Appellee is a Kentucky corporation, organized in 1883. It operates a telephone system, consisting of exchanges and toll lines in a territory about four hundred miles wide and one

[1] Trans., p. 324.

thousand miles in length, beginning in southern Indiana and Illinois and extending southwardly through the States of Kentucky, Tennessee, Mississippi and Louisiana, to the Gulf of Mexico. Its capital stock from its organization to May, 1898, was $1,695,700. Its capital stock was thereafter increased from time to time to February 1, 1907, as follows:[2]

Outstanding January 1, 1898	$ 1,695,700
May 6, 1898, increased	1,179,200
April 3, 1899, increased	584,200
September 30, 1899, increased	864,550
May 25, 1901, increased	1,467,400
December 16, 1901, increased	1,871,200
March 2, 1902, increased	1,693,950
December 23, 1902, increased	2,339,050
February 1, 1905, increased	1,754,300
February 1, 1906, increased	3,362,400
February 1, 1907, increased	3,362,400
Total outstanding February 1, 1907	$20,174,350

Each increase in its capital was paid for at par, with the exception of a part of the increase of May 6, 1898, which was used in payment of the telephone properties of the Great Southern Telephone & Telegraph Company in Louisiana and Mississippi, and this was done by appellee issuing one share of its stock for each two shares of the stock in the selling company; and, as a result of this transaction, appellee acquired the properties of that company in Louisiana and Mississippi at fifty per cent of their actual cost, which is shown to have been an advantageous purchase for appellee's stockholders.[3] Appellee also has a bonded debt of $1,020,000.[4]

Appellee operates exchanges and toll line. For exchange service a monthly rental is charged, which entitles each sub-

[2] Trans., pp. 77, 81 and 91.
[3] Trans., p. 81.
[4] Trans., p. 75.

scriber to unlimited telephone service with all other subscribers connected with that particular exchange. It also has telephone toll lines connecting the various exchanges, so that any subscriber or patron at any one exchange may have connection with any other subscriber or patron at any other exchange, upon the payment of a toll regulated according to the distance between the two points between which conmunication is desired.

The appellant Railroad Commission is created under the Constitution of the State of Louisiana, adopted May 12, 1898, and by Article 285 it is provided that if any party in interest be dissatisfied with the decision, or fixing of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such party may file a petition setting forth the cause of objection to such act, rule, rate, etc., in a court of competent jurisdiction at the domicile of the Commission, against the Commission as defendant; and it is further provided that, pending such determination of the reasonableness of such rule, rate, regulation, etc., by the courts, the order of the Commission shall be suspended. And by the decisions of the Supreme Court of Louisiana, it is the duty of the courts to pass upon the reasonableness and justness of any rate, rule, regulation, etc., thus substituting the judgment and discretion of the court for that of the Commission.

Railroad Commission v. *Kansas City Southern Railway Company*, 111 La., 133.

The Railroad Commission has since 1898 established rates both for exchange and toll line service, which appellee has observed.

On August 6, 1906, the appellant issued an order, No. 552, directed solely against appellee, reducing its rates for toll line service that had been in force and effect from 1898 to that time, this reduction amounting to about $40,000.00 per annum on intra-state business in the State of Louisiana on appellee's lines.[5] The rates theretofore in force and approved by the

[5] Trans., p. 54.

Commission were, generally speaking, one-half of one cent per mile, air line distance, for a three minutes conversation, and one-third of the initial charge for each additional minute of conversation.[6] The reduction ordered by the Commission in order No. 552[7] undertook to reduce this rate, and in many instances to make the initial charge for toll line service less than one-half of one cent per mile, air line distance, with the result as stated that the revenues of appellee would be reduced about $40,000.00 per annum if such order was enforced.

A petition to rehear was filed by appellee with the Commission and was disallowed on October 10, 1906, and an order was entered directing that the reduction in toll line rates should become effective within ten days thereafter.

Thereupon appellee, on October 19, 1906, filed its bill of complaint in the United States Circuit Court for the Eastern District of Louisiana, Baton Rouge Division, against the Railroad Commission of Louisiana, for the purpose of contesting the reasonableness of said order No. 552. In due time an answer and replication were filed and the proof taken, and the cause was finally heard and decided on August 26, 1907.

His Honor, Judge Saunders, in deciding the case, handed down an opinion[8] in which he held that the rates established by the Commission in its order No. 552 were unreasonable and unjust; that this reduction had been ordered by the Commission without any investigation and upon a mere guess; that appellee was not receiving a fair return upon its actual investment in the State of Louisiana, including all interstate business, under the rates then in force, and which return would be still further reduced if order No. 552 was enforced, and a decree was entered declaring order No. 552 to be null and void, and perpetually enjoining its enforcement against appellee.

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[6] Trans., pp. 89 and 90
[7] Trans., p. 7.
[8] Trans., p. 311.

While the suit was pending to test the validity of order No. 552, which is known as cause No. 61, the Railroad Commission declined to permit appellee to abolish a half-rate for toll line service after six P. M. and before six A. M., and declined to permit appellee to charge an additional amount for service through submarine cables under the Mississippi River. Thereupon, appellee, on July 24, 1907, filed its bill of complaint against the Railroad Commission, seeking to restrain it from undertaking to impose fines upon the appellee in the event it should decline to obey the rules of the Commission with respect to the two matters above set out. This cause is known as No. 66, and upon the motion for a temporary injunction, which was denied, the court directed that causes Nos. 61 and 66 be consolidated, and further directed appellant to file its answer within five days, and that appellee take proof either before or after the answer was filed, and that appellant be required to then take its rebuttal proof within ten days, and the causes stand for hearing immediately thereafter. This order was entered July 30, 1907.[9] An answer was filed August 5, 1907, and a general replication on August 6th. Proof was taken in the consolidated causes, and upon a final hearing on August 26, 1907, cause No. 61 was finally determined, and No. 66 referred back to the Commission for further action.

It is proper that this explanation be made because of the fact that much of the record is taken up with testimony relating to cause No. 66, which is not now before this court. The only questions in issue on this appeal may be thus stated: (1) Were the toll line charges of appellee in force in Louisiana prior to order No. 552 reasonable and just? and, (2) Was the action of the Railroad Commission in ordering a reduction in these rates warranted by the facts? and, (3) Was this order made under such circumstances as entitled it to the usual presumptions attaching to the action of a State Commission?

In order that these questions may be properly presented, it

[9]Trans., p. 126.

becomes necessary to state at some length the history of the telephone development in that State.

The telephone business in the State of Louisiana, at the time this purchase was made in 1898, was not in a prosperous condition. It was not considered of material advantage to the people of that State. There were in operation only ten exchanges, having a total of 2,729 subscribers and 211 miles of grounded toll lines.[10] (A grounded line consists of one wire, using the earth as a return circuit, while a metallic circuit consists of two wires, completing the circuit without using the earth.) On July 1, 1907, appellee had in that State sixty exchanges, with a total of 30,983 subscribers, and 18,644.9 miles of toll lines.[11]

Appellee had expended in Louisiana, up to June 30, 1906, $4,711,000.00 in the purchase and construction of exchanges and toll lines, which amount was still further increased by June 30, 1907, to $5,394,154.43.

The appellee's Louisiana income and investment account, including all earnings, both inter-State and intra-State, was as follows.[12]

Net income for year ending June 30, 1906	$266,249 56
Investment	4,722,435 74
Per cent of net income to investment	5.63
Net income for year ending Dec. 31, 1906	$273,938 75
Investment	5,185,368 28
Per cent of net income to investment	5.28
Net income for six months ending June 30, 1907	$135,591 23
Investment	5,394,145 43
Per cent of net income to investment	5.03

This record discloses beyond controversy or dispute that the telephone properties of appellee in Louisiana have been con-

[10] Trans., p. 79.
[11] Trans., p. 141.
[12] Trans., p. 147.

structed economically, prudently, and with good business judgment; that they have been maintained properly; that, by reason of changed conditions, the increased cost of material, more expensive conditions with respect to labor, rights-of-way, etc., it would require fully 25 per cent in excess of their actual cost to reproduce the properties at the present time; that the rates for toll line service are the same in Louisiana as they are in the other States in which the appellee conducts a telephone business; that the rates for toll line service are based, generally speaking, upon one-half of one cent per mile, air line distance, for a three minute conversation; that this is slightly lower than is usual throughout the United States, most companies charging three-fifths of one cent per mile, instead of one-half; that the rates in and of themselves are reasonable and furnish a cheaper and better facility for communication than any other public service company; that the exchange rates are fixed by the Commission; that the expense of providing toll line and exchange facilities cannot be accurately separated, in view of the fact that employes handle both kinds of messages, other employes repair and maintain both exchange and toll lines, the same poles carry exchange and toll lines, and by combining exchanges and toll lines, the maintenance and operating expenses are reduced greatly, which results in economies in the business which could not otherwise be had; that the company is honestly, prudently and economically managed in constructing, maintaining and operating its properties; and, finally, that, notwithstanding these facts, its net revenue upon the actual cost of these properties in Louisiana, which are worth one-fourth more than their cost, is only five and three-tenths per cent, and, if the order of the appellant, No. 552, be enforced, the per cent of net revenue would be still further reduced.

The evidence upon which the Commission acted, and the unreasonableness of its order, may best be stated by quoting from the opinion of Judge Saunders:

"The Commission has offered in this case certain statements and exhibits furnished by the Telephone Company, and tending to show its financial condition and property, and the evidence of its secretary, Mr. Barrow, and an affidavit of its president, Mr. DeFuentes, as to the manner in which, and the facts on which, the order No. 552, reducing the rates, was adopted. Mr. Barrow's testimony is not as specific and clear on this point as it might have been, but it is due to him to say that he answered all questions put to him with entire frankness. I gather from his testimony that the reason for adopting order No. 552 was this: The complainant is required by law to file an annual statement with the Commission, showing among other things the value of its property in Louisiana and the net amount realized from its Louisiana business. On the basis of the value shown by these statements, the complainant was making from 10 per cent to 15 per cent a year. The Commission was of opinion, therefore, that on its own showing the profits made by the complainant were unreasonably large, and, accordingly, made the reduction contained in Order 552. Mr. Barrow admits that these annual statements of the complainant showed only the valuation placed on the company's property in Louisiana for the purposes of taxation, and that such valuation of the property was not, in his opinion, its real value. Yet the reductions ordered were based solely, so far as appears, on the relation between the valuation so shown and the profits made by the company."

* * * * * * * *

"In the present case, no investigation whatever was made by the Commission before they acted. They simply combined two statements contained in the annual report of complainant—the statement as to value of plant and the statement as to net earnings—and from these two amounts figures out what would be a reasonable and just return for the complainant to get from its Louisiana business. This procedure ignores nearly all the elements of the problem and bases this Commission's solution on an erroneous process."

"There is no reason in law nor fact, why a court should presume that the Commission has, by this method of dealing with the problem, hit upon rates that are in fact reasonable and just."

* * * * * * * *

"The only reason that the Commission has for supposing

that it has correctly guessed what would be a reasonable and just rate of compensation to allow the telephone company, is its assumption that that rate could be properly arrived at by considering only the value at which the complainant's property is taxed in Louisiana and the net returns which the Company makes over and above its expenses, and allowance for depreciation and repair. As I have just stated, this is something wholly erroneous. Under the facts disclosed in this record, I am clearly of opinion that complainant is entitled to a fair return on its money actually invested; that 7 per cent in a business of the sort carried on by complainant, is a fair and proper return, and that complainant is not now deriving from the rates authorized by Order 488, as much as 7 per cent on its investment in Louisiana.

"The public could not today get as complete a telephone system as the existing one, by expending a much larger sum than that on which the complainant is asked to base its rates on its profit. Moreover, it has been shown that the rates charged in Louisiana, are the same in most cases, and less in many cases, than the corresponding rates charged under similar circumstances and for similar service by telephone companies elsewhere. The public, therefore, has no shadow of a reason to complain either that it is paying a rate that is unreasonable and unjust to the public, or that the complainant is making an unreasonably large profit on its investment."

II.

DEPRECIATION.

During the examination of appellee's auditor, the secretary of the Railroad Commission, Mr. Barrow, was present and aided in the cross examination [1]. Mr. Barrow has been secretary of the Commission for about eight years. Prior to that time, he was connected with the Interstate Commerce Commission, in the statistical department. [2]

It also appears that all records, vouchers and other papers requested by counsel and Mr. Barrow were furnished and an

[1] Trans., p. 77-8.
[2] Trans., p. 271.

opportunity given to them to make investigation prior to the closing of the deposition.[3] So it may be assumed that the financial statements furnished by the auditor were examined by competent persons, and their accuracy verified; and, in fact, the only objection that has been raised is to the item of expense charged under the head of "depreciation," and this objection comes without any dispute as to the facts.

Depreciation is an important item of expense in any business enterprise, and if not taken into account or recognized by the management, financial disaster is inevitable.[4] So soon as any property is constructed, decay at once begins. This decay may be from natural causes, such as dampness, cold or heat or other elements; or it may be from artificial causes,—wear, abuse, use or misuse, and other causes; it may be slow or it may be rapid. It is impossible to take care of this deterioration as it occurs, but provision must be made out of the earnings of the property, sufficient to renew and replace destroyed and worn out parts of the plant when the time does arrive for its replacement, the amount varying with the nature of the property, or the rapidity of the decay, whether from natural or artificial causes. A simple illustration, in the language of one of the witnesses, in which the difference between repairing and renewing a plant is shown, will suffice:[5]

> "Maintaining them (telephone properties) and repairing [renewing] them, can be very well illustrated by the clothes that one wears. We can take a suit of clothes and give it as good treatment as we will, and perhaps have it cleaned and pressed and patched, and that is maintenance; but, the time comes when all that pressing and patching and brushing does no good, and a new suit is all that will fill the bill. It is that way with telephone switchboards—care for them as we will, and maintain them as best we can, and the time comes, outside of the question of the board becoming obsolete—when the connections get loose and the board is worn out and must

[3] Trans., p. 77–8
Trans., p. 88.
[5] Trans. p. 178

be discarded, even though no improvements in the art made it desirable and necessary."

Depreciation on a telephone property is not so simple or so easy of solution as it would be with a suit of clothes; a telephone plant consists of many things—poles, cables, wires, cross-arms, brackets, insulators, switchboards, instruments, underground conduits, buildings in which the central office apparatus is installed, offices, office furniture and fixtures, horses, wagons, tools and other implements. Each of these items entering into a telephone plant has a different life. The underground conduits will last many times longer than the poles; the switchboards will last longer than the wagons and horses; the cables will last longer than the open wire construction. So that, after a telephone plant is constructed and put into operation, the decay, both from natural and artificial causes, begins at once to destroy the plant, and as each particular part of the plant becomes worthless, that part must be renewed, and certain parts of the plants must be restored sooner than others; but beyond this question of renewal, the plant must be maintained in an operating condition. If a wire breaks, it must be repaired; if a switchboard fails to work, it must be repaired, and this item of expense is what is called "Maintenance"; that is, maintaining the property in an operating condition. But when any part of the plant becomes so worn, or so old, that it can no longer be maintained in an operating condition, it must be taken out and replaced with a similar article which is new, and this expense is called "Reconstruction," and a depreciation fund is provided out of the earnings for this purpose. Oftentimes telephone apparatus has not lived its full life, is not worn out and can be still longer used, but a new invention is brought out which is an improvement, and this must be substituted in order that the plant may be kept up to a proper standard of efficiency. This substitution or replacement must be taken care of by the depreciation fund. Unknown and unforeseen improvements and inventions in the art, and disasters, which are certain to occur in a cycle of time, such as conflagra-

tions, earthquakes, sleet storms, floods, etc., must be provided for, and a contingent or reserve fund must be set aside out of the earnings to take care of these improvements, inventions and disasters, in order that the plant may continue in existence in an up-to-date and operating condition.

These facts are not in dispute in this record, nor, indeed, can they be disputed, and this expense must be taken care of either by providing new capital, or by treating it as an expense of conducting the business and taking care of it out of the earnings of the business. In its last analysis, so far as the public or patrons of the company are concerned, it is immaterial which method be pursued, since it is evident that, if these items of expense are to be taken care of by additional capital, the owner of the property is from time to time employing a larger capital upon which the public must pay a return; whereas, by treating the matter as an item of expense in conducting the business, the capital account upon which the company is expected to pay a return is never increased.

The method pursued by appellee, and which is shown by the record to be the correct and proper way, is as follows: Seven and one-half per cent of the actual cost of construction is taken out of the earnings each year as one of the expenses of conducting the business, and is called "depreciation" or "reserve." As parts of the various plants are renewed or reconstructed, the expense of so doing is provided by this fund, and, if at the end of each year a less amount than seven and a half per cent of the actual cost of the plant has been expended in reconstructing that plant, the difference between the amount actually so used and seven and a half per cent of the actual cost of the plant is charged to depreciation as an item of expense. And this is inevitable from the very nature of the business. The first year's deterioration shows but little, but as the years go by more of the plant must be renewed. The switchboard is an important part of the plant. It is not removed until it has been in use for many years, but a

part of its cost must be taken from the earnings each year, so that when the time for its renewal arrives, funds will have been provided for its renewal, instead of charging the entire cost of the renewal to the expense of that particular year; and so it is with the various other parts of the plant.

Where a replacement is made necessary, costing more than the original cost of the property so replaced, the difference between the cost of the replacement and the original cost of the property replaced is charged to capital account, and only the original cost of the replaced property charged to reconstruction. The purpose of appellee by this method is to maintain the plant in its original condition. If betterments or improvements are added, they enhance the value of the plant by the amount of such improvements and betterments, less the original cost of that particular part of the plant so replaced. By this method the plant is maintained as nearly as possible as it was when first constructed, and it continues to serve the purposes for which it was constructed; it furnishes the facilities desired by the public, and it yields a reasonable return to its owners. This is not only just and lawful when applied to any business, but it is peculiarly applicable to a telephone plant, because when money is once invested in a telephone plant, it becomes a permanent investment and can never be changed. The plant cannot be taken down and sold for any appreciable part of its cost. A bank may liquidate at any time and return its capital to its stockholders, but once a telephone plant, always a telephone plant, until it wears out, or until bankruptcy occurs. Hence it is that the owner of a telephone property has the right in law and morals to earn a sufficient amount to pay current expenses, and to provide for the renewal of its plant from time to time as decay or other causes may necessitate, and, until this has been done, there can be no return to the owners if the property be properly managed.

Therefore, it is respectfully submitted that the only controversy that can exist is as to the *amount* of depreciation. This

record abundantly shows, without any controversy, that seven and a half per cent of the cost of the plant, the basis adopted by the appellee, is reasonable and necessary to the continued existence of this property. It is shown by the president, who has occupied this position for eighteen years;[6] by the general manager, who has been assistant general manager and general manager since 1890;[7] by its auditor, who has been such for seven years;[8] by the division superintendent, having had charge of all of appellee's property in Louisiana since 1898;[9] by the engineer of the Chicago Telephone Company;[10] and by the engineer of the Southern Bell Telephone and Telegraph Company, operating in a territory covering one-eleventh of the entire United States, including Georgia, Alabama, the Carolinas and Florida.[11]. In addition to this, it is shown that the city of Chicago appointed three experts, who made a thorough and painstaking investigation of the telephone business, covering a period of many months, and that this commission reported that 8.2 per cent per annum of the original cost of the plant was necessary to perpetuate the plant in Chicago,[12] where decay and destruction is far less rapid than in Louisiana. And against all this evidence, there is not a witness or circumstance to refute it. So that it may be assumed that it is right and proper that seven and a half per cent per annum upon the original cost of the plant be allowed as a legitimate and proper item of expense in maintaining a telephone plant in Louisiana.

Appellant takes exception to the fact that the total depreciation fund charged as an expense against the business in any one year has not been actually used in reconstructing the properties during that year, and appear to think that this indicates that too much is set aside for depreciation.

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[6]Trans., pp. 88–205.
[7]Trans., p. 169
[8]Trans., pp. 54–63.
[9]Trans., p 182.
[10]Trans., p. 219.
[11]Trans., p. 232.
[12]Trans., pp. 219–20.

This arises from a failure to remember that these properties have been constructed in Louisiana gradually from 1898 to 1907, and that while the time for reconstruction has arrived on many of the plants and parts of other plants, yet the time for reconstruction on the newer plants has not yet arrived, and therefore, this depreciation fund has been accumulated for the purpose of taking care of the reconstruction when the time therefor *does* actually arrive.

The actual capital invested in Louisiana to June 30, 1898, was $937,583, and has gradually grown to June 30, 1907, to $5,394,145.43.[13] The exchanges in 1898 were only ten in number, and in 1907 they had been increased to sixty. The toll lines in 1898 consisted of 211 miles of grounded circuits, and in 1907 had increased to 18,644.09 miles of well constructed metallic circuits. The number of subscribers in 1898 was only 2,729, and in 1907 had increased to 30,983.[14] These properties have been constructed year by year since 1898.[15] So that with respect to much of these properties, the time has not arrived for any reconstruction, while with respect to other parts much reconstruction has been done, thus using a part only of the depreciation fund.

If, under these facts, the total amount of the depreciation fund had been actually used in reconstruction, it would be conclusive evidence that seven and one-half per cent of the actual cost of the property is not sufficient to perpetuate the plant.

[13] Trans., p. 241.
[14] Trans., p. 141.
[15] Trans., p. 242.

III.

APPELLEE'S INVESTMENT ACCOUNT IN LOUISIANA.

The record shows beyond dispute or controversy that the actual cost of appellee's telephone properties in the State of Louisiana as of June 30, 1907, was $5,394,145.43; that these properties had been constructed economically, prudently and with good business judgment;[2] and that to reproduce the same properties at this time would cost at least twenty-five per cent in excess of their actual cost to appellee, owing to the changed conditions, more expensive material, higher wages, and other items.[3]

It is insisted, however, by appellant that appellee is not entitled to a return upon the actual cost of these properties, notwithstanding the fact that they are now worth more than their cost, and notwithstanding the fact that they cannot be reproduced within twenty-five per cent of their cost. It was believed by appellee that there could exist no controversy as to its right to a fair return upon the actual cost of its properties, especially in view of the fact that they are now worth more than their cost, and in view of the further fact that they had been constructed prudently, economically and with good business judgment. It is proposed by appellant to defeat appellee's right to a fair return upon the actual cost of this property by attacking the sources from which appellee acquired the funds with which to construct these properties. It probably would be a sufficient answer to say that it is no concern of appellant as to *where* or *by what means* appellee acquired the funds with which to build these properties, but an analysis of the contention will, it is submitted, show how groundless it really is.

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[1]Trans., p 145
[2]Trans., pp 82-168
[3]Trans., pp 168-192

The facts are that appellee has from time to time increased its capital account by the issuance and sale of additional stock at par, and that it also issued its bonds and sold them at or above par. It has from time to time borrowed large sums of money in the markets of the world, for which it has executed its notes, and on which it has paid interest. It has in its treasury a surplus, which has been created by withholding earnings from its stockholders, and it also has in its treasury a reserve fund to meet unforeseen contingencies, and to provide for the renewal of its properties when the time arrives for such renewals to be made. From all these sources it has derived funds with which it has developed its business and constructed its telephone properties in Louisiana and elsewhere. It does not charge as an expense against the business any interest on its bonded debt, any interest upon its notes, any dividends upon its outstanding shares of stock, and no one of these items is included in its expense account. It merely seeks to charge in expenses such amounts as it expends in operating, maintaining and preserving its properties, and it only asks to charge rates which will yield a reasonable return upon the actual cost of these properties over and beyond these necessary and proper expenses.

But the particular point to which objection is made by appellant is that its surplus and reserve, or the balance of the unexpended depreciation fund, is used by appellee in building plants and making additions to existing plants, instead of holding this maintenance reserve in a separate and special fund in its treasury, and then borrowing money and paying interest thereon, and thus providing funds to build and extend its telephone properties. To state the proposition differently, it simply means that appellant insists that if A has $5,000.00 in cash, and owes a debt of $5,000.00 which will not mature for five years, he should continue to hold the $5,000.00 in his pocket for the purpose of meeting his obligation at the end of five years, and in the meantime if he has need of $5,000.00 in his business

he should borrow that amount and pay interest thereon; whereas, appellee insists that what it has done is the only correct and prudent business method, namely, to use whatever funds it has in its treasury in its business, and, when the time arrives to meet deferred obligations, to provide funds at that time sufficient to take care of the obligations as they mature.

However, if it shall be held that whatever amount has been taken or borrowed from the surplus or maintenance reserve funds by appellee and used in constructing telephone properties in Louisiana, is to be deducted from the actual cost of appellee's properties in Louisiana in order to ascertain the exact amount upon which it should have a return, then interest on the amount of borrowed money appellee has used in constructing these same properties must be included in the account as an item of expense.

The record shows that on June 30, 1907, appellee had accumulated as a reserve for deferred maintenance $982,231.87[4] for its entire system, including Louisiana, and that at the same time it had borrowed and used in its business between two and three million dollars,[5] so that, if that part of the maintenance reserve is to be deducted from the capital account of appellee in Louisiana, it is certainly entitled to add to its capital account a proportionate amount of this large floating indebtedness which it has borrowed and invested in its business.

Judge Saunders, in passing upon this question, stated:

"Counsel for the Commission argue that the complainant's property in Louisiana was not all paid for with complainant's capital, but was partly paid for out of a surplus or reserve, or depreciation fund, which was accumulated by complainant from the receipts of its Louisiana business, and was then reinvested, not in repairs or maintenance, but in extensions and additions to the property. This may be a fact, but it is not shown to be a fact. The Commission has power, if it wishes to do so, to direct the books of complain-

[4]Trans., pp. 146-210.

ant to be so kept as to show such use of its receipts. In the present state of the books, this seems to be impossible. And the floating debts of the complainant would seem to be much greater than any sum which could possibly have been used from the reserve, or surplus, or depreciation fund for extensions and additions, after paying for maintenance and repairs."

Another complete answer to the insistence of appellant is that the *reason* that seven and one-half per cent of the actual cost of the property is a sufficient sum to perpetuate the plant is that the company uses this reserve for deferred maintenance in its business, which yields a profit from year to year, instead of lying idle in a special fund in the treasury of the company. It will be remembered that the experts and those entirely familiar with this item of depreciation on telephone properties state from eight to twelve per cent is necessary to perpetuate the properties, whereas appellee only uses seven and one-half per cent, and it is enabled to perpetuate its properties on this small per cent because of the fact that it does use this maintenance reserve fund indiscriminately in its business, and because it makes provision for renewals and reconstruction from time to time as they become necessary by providing other and additional funds to take place of the maintenance or reserve funds used in its business.

In addition to this, it is a well known fact that no business can be conducted successfully without a working capital, and if appellant insists upon taking out of the capital account that part of the maintenance reserve used by appellee in constructing its properties in Louisiana, then there must be added to that capital account, or to the amount upon which it is entitled to an income, a reasonable working capital, which counted at only a small per cent of the value of its properties would far exceed that part of the maintenance reserve used in constructing these properties.

But above and beyond all these objections it is now well

settled by the decisions of this Court that the basis of all calculations is the fair value of the property employed for the public use, and in this case it is shown beyond dispute that the fair value of appellee's property in Louisiana exceeds the amount upon which it asks a reasonable return by more than one million dollars, which is in excess of the entire maintenance reserved for the entire system, instead of that part of it belonging to the properties located in the State of Louisiana.

Appellant's argument is that because telephone properties are unstable and subject to rapid deterioration, appellee is not entitled to a return upon the reasonable cost of the property, but only to a return upon the value less whatever depreciation has actually taken place. The argument seems to be: A property has cost $100,000, and its life is ten years; the first year the owner is entitled to a return on the full $100,000 capital invested; the second year the property is worth ten per cent less because of its depreciation and the owner is only entitled to a return on $90,000, and so on until the tenth year when the return must be based upon a valuation of only $10,000, and thereafter the owner is not entitled to any return whatever. In other words, if a loan of money be made for ten years, and the borrower pays interest thereon annually for ten years, at the end of the ten year period the principal belongs to the borrower. This contention, if sanctioned by law, would not tend to encourage investments in such enterprises.

It is, therefore, insisted that there can be no possible objection in reason why the actual cost of appellee's properties in Louisiana shall not be taken as a basis upon which to allow it a fair and reasonable return, and under the facts in this record, the valuation upon which a return is asked is extremely conservative, so that it should rather be commended for its moderation than be made a subject of criticism.

IV.

DECREASED CHARGES DO NOT CORRESPONDINGLY INCREASE EARNINGS.

It is assumed by appellant that a decrease in toll charges will increase the earnings without a corresponding increase in operating expenses, and this principle does apply to many kinds of business, but it does not apply to a telephone property. The record shows, without dispute, and in the nature of things it must be true, that telephone toll service is essentially different from that of any other service rendered the public; and that the convenience of the patron and not of the employes of the company must be considered. When any patron undertakes to use a toll line there are employed two wires from the point where the conversation begins through to the point where the conversation ends—so that the sender and receiver of a telephone toll conversation *rents* from the company the exclusive use of two wires for the time the conversation lasts between the two points where the conversation is had. If the employes of the company could distribute the conversations over the toll lines through the hours of the day or night, suiting their (the company's) own convenience and economizing their own time, the revenues of the company would be increased without an appreciable increase in expense; but as the convenience of the customer, and not the company, must be consulted, it results that the limit to the capacity of the lines is measured by the limit of the business that can be handled during the busiest hours of the day or night, and that during the remainder of the day or night, operators must be on duty ready to receive and send messages whether they be offered by patrons or not. The facilities of the company must be sufficient to take care of the business at the busy hours of the day or night, and it is shown, without dispute, that any appreciable increase in the toll business in Louisiana would necessitate a corresponding increase in facilities and in the operating force, for the reason that at certain times duing the day and night the business is congested, and the full capacity of the facilities is reached.

This is well illustrated by certain proof in the record with reference to the half rate after 6 P. M., and prior to 6 A. M. It was assumed in the beginning of telephone toll service that, as telegraph companies had in effect what is commonly known as a half rate at night, the telephone toll lines should adopt the same basis, but it was discovered by experience that there was no similarity between the telephone toll messages and the half rate night telegraph messages. The telegraph companies receive a written message at any time prior to twelve o'clock at night to transmit and deliver the next morning in business hours for one-half the day rate, provided the charge be not less than twenty-five cents. This written message is filed during the hours of the night, and at the convenience of the operator the message is transmitted, and then delivered the next morning in business hours. If a message be tendered the telegraph company at any time during the night, with the request that it be delivered promptly and without waiting for the business hours of the next day, the full day rate is charged. With the telephone toll message, there can be no such thing as receiving the message during any time of the night and transmitting it at the convenience of the operator and delivering it the next day during business hours; but the telephone toll message must be delivered immediately. Indeed, the telephone toll operators must put up the connection and put the two parties into communication, and the patrons themselves then become a part of the operating force of the company, and the message is of course, delivered and received at once. The telegraph company can, and does, send several messages over one wire at the same time, and consults the convenience of the operators. The telephone company employs two wires to send one message, and, of necessity, must consult the convenience of the customer alone.

But this was not the serious complaint with respect to the night half rate. It was discovered, by experience, that during the afternoon hours persons desiring to use the toll lines waited until the half rate took effect at six o'clock, not because it was

more convenient for them to do so, but because the rate was reduced at that time, so that the result was that at six o'clock the lines were overloaded, and many messages which were offered could not be taken because of the congested condition of the lines. This resulted in a double loss to the company. It left idle the operators and facilities during the afternoon hours, and it so overburdened the facilities and operators after six o'clock for a short time that many messages could not be sent and the revenues of the company were still further decreased.

Therefore, it is manifest that the principle applicable to many other kinds of business, with respect to increased patronage increasing the revenues without correspondingly increasing the capital to be employed and the expense of rendering the service, does not apply to a telephone toll line, but that what is called the "peak-load" is the measure of the capacity of the facilities and operating force.[1] A railroad train may have attached to it an additional passenger coach to accommodate an increased patronage, and neither the facilities nor the operating expenses of the road may be correspondingly increased, but when a telephone toll line reaches the limit of its capacity at any time during the day or night, any increased patronage must be met with a corresponding increase in facilities and operating force; and it is therefore, insisted that appellant is mistaken in assuming that a decrease in rates makes a corresponding increase in revenue, without an appreciable increase in capital or operating expenses.

V.

A TELEPHONE PLANT CAN NEVER BECOME A FINISHED PROPERTY.

It has been shown that a telephone system consisting of exchanges and connected together with toll lines, can be constructed and operated more economically than where the exchanges and toll lines are owned and operated by separate com-

[1] Trans., pp. 93 and 95

panies. Appellee operates both exchanges and toll lines in the State of Louisiana, and, therefore, its entire business in Louisiana must be considered in fixing rates either for exchange or toll line service; and the essential difference between a telephone property and all other public service companies must also be taken into consideration. A railroad company, street railway, gas, water or other public service company may be operated as a finished property without adding appreciably to its capital account from time to time. Railroad companies, gas, water or street railway companies may secure additional patrons without any appreciable increase either in their capital account or operating expenses. But with a telephone property, the situation is wholly different; each new subscriber to an exchange requires the employment of new and additional capital, because wires must be run from the central exchange to the patron's place of business or residence, and the wiring in the interior of the building must be installed and connected up with a new telephone. In the central office switchboard the wires for this particular patron must be so connected that such patron may reach and may be reached by all other patrons of the exchange. All this means additional and new capital for each new patron, so that a telephone property can never, in the nature of things, be a finished or completed property; it must continue to grow day by day if it serves its purpose and accommodates the public; and the serious problem confronting every telephone company is making provision for new capital from time to time with which to take care of new patrons. This can only be done in one of two ways: either to charge existing patrons a price, which will provide not only for the expense of the business including a perpetuation of the plant, but also a surplus with which to provide for extensions to take care of new patrons; or to provide additional capital from time to time, as the exchange subscribers increase. It would manifestly be unfair to pursue the first plan, and, therefore, it becomes necessary for the management to procure new capital from time to time to take care of the growth of the business. This new capital can be acquired in one of three ways: either by the issuance and sale of additional stock

from time to time, or by the issuance and sale of bonds, or by borrowing money upon the credit of the company. If fresh capital be provided by the sale of bonds, the first and possibly the second mortgage bonds may be sold in the markets of the country, but the third mortgage, or fourth mortgage, would be unsaleable. If the credit of the company be used, after a few years the floating indebtedness exhausts the credit of the company. So that the only practicable way in which a telephone property can be financed is by the issuance and sale of stock from time to time as new capital may be needed; and that is the method that has been pursued by the appellee, as shown by the various increases in its capital from 1898 to the present time, starting with a capital of $1,695,700.00 and increasing to $20,174,350.00.

In order that these new issues of stock may be sold, it is necessary that a sufficient return upon the outstanding stock be paid to induce new investors to come into the business. If it be assumed that the stock may be sold at less than par, it is readily seen that, after a few years and a few sales of stock at less than par, the markets of the country would be closed to a sale of the stock, even at a very greatly reduced price; so that the only practical method by which telephone properties can be properly financed is to pay such dividends to existing stockholders as will induce the investing public to come into the business from time to time by the purchase of stock at or above its par value.

So it is insisted that, both in the interest of the stockholders and of the patrons of the company, it is essential that such dividends shall be paid to the shareholders as will induce new capital to come into the business from time to time. It is undoubtedly to the interest of the public that all new patrons shall be served with telephone facilities. Existing patrons desire intercommunication with new patrons, their service is correspondingly increased, and they derive a greater benefit from the service; therefore, existing and prospective patrons have a direct interest

in the continued prosperity of the telephone property; and on the other hand, shareholders are entitled to a fair return upon the capital which is employed in serving the public, commensurate with the risks taken in a business commonly considered and recognized to be extremely hazardous.

VI.

A PROPER RETURN ON THE INVESTMENT IS NECESSARY TO A CONTINUANCE OF THE BUSINESS.

In considering the return to be paid to those who employ their capital in serving the public in the telephone business, the peculiar factors entering into the business must be considered. It is the newest means of communication in general use. Its life is measured by the present generation. From a mere scientific toy it has become one of the most useful and important tools in the affairs of mankind. Speaking with respect to Louisiana, as late as 1898, it was of no practical importance to the people of that State. There were less than 3,000 persons using the exchange service and less than 212 miles of cheap, experimental toll lines. On June 30, 1907, there were more than 30,000 subscribers and more than 18,000 miles of well constructed, modern and satisfactory toll lines belonging to the appellee in that State.

In the motion filed in March, 1908, in this case, asking that the case be advanced and speedily heard, it is stated by appellant that:

> "The toll line service in Louisiana is of considerable importance, *and the demand therefor constantly increasing*, as appears from the record herein. *It has become a public necessity.*"

It is further shown that the financial interests in Louisiana have declined to furnish any capital to aid in the development

of this business,[1] for the reason that they can employ their capital with more profit and better security than is offered in the telephone business.

The owners of this property are non-residents of the State of Louisiana. They have invested their means in a property which may be likened to a mere cobweb suspended in the air, which is constantly subject to injury and destruction; have assumed all the risks of disaster; have developed a scientific toy into a public necessity, and yet it is seriously insisted that the owner is entitled to a less reward than can be obtained upon undoubted collateral and without the assumption of any material risks. And it may here be noted that all of this talk about the telephone in Louisiana having become a public necessity grows out of the fact that it has outstripped all of its competitors, thereby enabling the people of Louisiana in their business and social affairs to accomplish more with less effort and time and expense. And the irritation caused by the failure to receive or send a telephone message is due largely to the fact that a telephone conversation accomplishes too much with so little effort, time and expense, and the alternative involves so much labor that any interference becomes at once vexatious and annoying.

Appellee's President, who has been such continuously since 1890, emphatically states that the present rate of dividend, seven per cent, is not sufficient to attract the additional capital necessary to continue the development of the business; that appellee has no other means of raising money except out of its business; that, if it be prevented from bettering its condition financially and paying a larger reward to its stockholders, it cannot meet its natural growth, and that seven per cent is not now considered as an inviting or tempting rate for money for a telephone business.[2]

And he adds:[3]

[1] Trans., p. 199.
[2] Trans., p. 195.
[3] Trans., p. 211.

"As a telephone system's value depends entirely upon its connection and saturation of its system, its use and its value depend entirely upon its continued growth and development, and this must be done until the communities are practically saturated. That has not been done to any appreciable extent. Not only is this true with reference to exchanges, but also with reference to territory, for, as I have stated before, in this deposition, there are vast regions in Louisiana in which there is no telephone development to speak of, either exchange or toll lines. This is very important and very desirable from every standpoint to do. The company would gladly do it if it were possible, for it would add to the value of its service to its present customers, which would give it very much better standing with them, for it would be providing them with additional and increased facilities, and therefore, until the territory is saturated up to a full percentage, a normal percentage of the telephone growth of the State, it is bound to be considered as incomplete and unsatisfactory, and this growth and development must come out of the new capital and this new capital must be induced to invest in the business by reason of the fact that the business itself affords and offers an attractiveness, and this can only be done by adequate rates." [3]

VII.

THE POWER TO REGULATE

There can be no denial of the right of the State of Louisiana to regulate the telephone business by prescribing *reasonable* rules and *reasonable* rates for telephone service, and the State undoubtedly has the right to create an administrative board clothed with power and authority to execute the constitutional and legislative will. But this power has its limitations, and it is not to be supposed for a moment that this administrative board has the authority or power to act as proprietors of the business, and to determine for itself arbitrarily and unreasonably what the rates and regulations shall be.

This government was established to protect and safeguard

the personal and property rights of its citizens, and, as this Court has so often said, "This is a government of laws and not of men." The theory upon which the government was founded is that individual liberty, individual initiative, thrift, perseverance, intelligence and good business judgment are necessary, not only to the happiness of the people, but to the success and prosperity of the country itself; and therefore, when any personal or property right of any citizen or number of citizens is sought to be invaded or restrained by government, the question should be approached with a full realization of this fundamental principle. The unthinking citizen has heard so much in the recent past of the power of the government to regulate and control the business affairs of its citiznes that it has become a fixed habit of thought with the many to believe that the right to control and regulate is unlimited, and that any desired rates may be established, without a thought as to the injustice or wrong that may be done to the business or its owners.

Some of these administrative boards have apparently come to believe that they represent the patrons to the exclusion of the rights of the proprietors, and they have too often undertaken, as apparent proprietors of a business to fix rates without a thought or consideration of the rights of those who have supplied the capital, and who are under the duty and obligation of protecting, operating and managing these properties.

It is not intended to do more than briefly review the growth of this power of governmental regulation and to point out its purposes and limitations.

At the common law, all kinds of businesses affected with a public use could only charge reasonably for the service rendered. Contracts for unreasonable charges were void, and in the absence of contract only a reasonable charge for services rendered could be recovered at law, the basic principle being, as stated by Mr. Justice Blackburn, in *Peek* v. *N. S. Railroad Co.*, 10 H. L. cases, 511:

"A common carrier is bound to carry for a reasonable remuneration."

In *Bastard* v. *Bastard*, 2 Show, 81, it is said that—

"Where there is no agreement as to price, the carrier might have a *quantum meruit* for his hire."

In *Harris* v. *Packwood*, 3 Taunt., 264, it is said that—

"A carrier is bound by law to carry everything which is brought to him for a reasonable sum to be paid to him for the same carriage, and not to extort what he will."

In *Citizens Bank* v. *Nantucket, etc.*, 2 Story, 35, Mr. Justice Story says that—

"It may be in the nature of a *quantum meruit*."

In 1 Duval, 146, the Court of Appeals of Kentucky says:

"A common carrier cannot, like a merchant or mechanic, consult his pleasure or caprice as to the conduct of his business. The law makes it his duty, when he can conveniently do so, to receive and carry goods for any person whatsoever for a reasonable hire."

In *Munn* v. *Illinois*, 94 U. S. 113, this Court approves the doctrine of Lord Ellenborough in *Allnutt* v. *Inglis*, 12 East, 527, decided in 1810, where it is said:

"There is no doubt that the general principle is favored, both in law and justice, that every man may fix what price he pleases upon his own property, or the use of it; but if for a particular purpose the public have a right to resort to his premises and make use of them, and he have a monopoly in them for that purpose, if he will take the benefit of that monopoly, he must, as an equivalent, perform the duty attached to it on reasonable terms. The question then is, whether, circumstanced as this company is, by the combination of the Warehousing Act with the act by which they were

originally constituted, and with the actually existing state of things in the port of London, whereby they alone have the warehousing of these wines, they be not, according to the doctrine of Lord Hale, obliged to limit themselves to a reasonable compensation for such warehousing. And, according to him, whenever the accident of time casts upon a party the benefit of having a legal monopoly of landing goods in a public port, as where he is the owner of the only wharf authorized to receive goods which happens to be built in a port newly erected, he is confined to take reasonable compensation only for the use of the wharf."

It is thus seen that the principle upon which this power of control and regulation is founded is that the owner of a property devoted to a public use, may not take advantage of his power and practice extortion upon his neighbors, or the public. The proprietor of the business at the common law is still left free to fix his own charges, and put his own price upon his services or property, provided only that he does not practice extortion, and that he exacts no more from his customers than is reasonable and just. It is assumed that no opportunity is afforded to the merchant or mechanic to extort more than a reasonable price for his goods or service, and, therefore, he may, without any limitation whatever, price his goods and service, and his customer may take them or leave them, as he likes; but a business affected with a public use has the limitation placed upon it that the proprietor must act honestly and practice no extortion.

The expression that a property affected with the public use is subject to governmental regulation has a well defined meaning, which was thus stated by this Court in *Munn* v. *Illinois*, 94 U. S. 113:

> "Property does become clothed with a public interest when used in a manner to make it of public consequence, and effect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public, for the common good, to the extent of the interest he has thus created."

The interest the public acquires in any of these properties, *with respect to charges*, is merely the right to be served impartially and on reasonable terms; that is to say, to receive reasonable value for the charges made. And, *with respect to rates*, this is the extent and limit of the interest the public acquires in the property of another; and even though it be a property serving the public generally, the owner is still the proprietor.

An examination of the various legislative enactments throughout the country will disclose the fact that, properly analyzed, nothing more than this has usually been attempted by the law-making powers. Systems have been built up of governmental control and regulation by the creation of administrative boards to see that this underlying principle is observed in the complicated business affairs of the country. It would serve no useful purpose in this case to refer to any particular system or law other than that of the State under which this case has arisen.

In Louisiana the administrative board is established, and its duties and powers defined, by the Constitution. The whole declaration is embraced in Article 284, the material part of which is:—

> "The *power* and *authority* is hereby vested in the commission and it is hereby made its *duty* to adopt, change or make *reasonable and just* rates, charges and regulations to govern and regulate railroads, steamboats and other water craft, sleeping car, freight and passenger tariffs and service, express rates and telephone and telegraph charges, to correct abuses and prevent *unjust discrimination* and *extortion* in the rates for the same on the different railroads, steamboats and other water craft, sleeping car, express, telephone and telegraph lines in this State." (Italics added.)

The power to make "reasonable and just rates" is followed by the expression "and prevent unjust discrimination and extortion." The power to make *reasonable* and *just* rates is synonymous with the expression "to prevent extortion," since an unreasonable rate *is* extortion, and any rate that is not ex-

cessive *is* reasonable. Therefore, under this Constitution, the commission has no authority to act as the proprietor of another's business, and arbitrarily to dictate to him what charges he shall make for his services or property; and, *with respect to the question of rates*, the power of the commission is limited to fixing such rates as will prevent extortion and unjust discrimination.

Extortion exists only and solely when reasonable men, familiar with the facts, agree that the charge is unreasonable or excessive. If the charge be such that reasonable men, having a full knowledge of all the facts and circumstances, differ as to whether it be reasonable or unreasonable, then the charge cannot be extortion, and is, therefore, not unreasonable, and the Commission has no warrant, under the Constitution, to fix rates on any different basis.

If it be noon-day, all reasonable men will agree that it is day, and if it be midnight, all reasonable men will agree that it is night; but there does come a time when reasonable men differ as to whether it is day or night—a twilight time comes when there is uncertainty. And so it is with the compensation demanded by the proprietors of a business affected with a public use, and a time comes when reasonable men differ as to whether a charge is reasonable or unreasonable; and yet, when no man can, with certainty, say that it is unreasonable. In this situation, the proprietor of the business,—he who has projected such an undertaking, who has encountered all the original risks of executing it, who is still subject to risks, which from natural and other causes, every such undertaking is subject to—should not be denied the right to put a value upon his services or property, which reasonable men cannot say is unfair and unjust. Is he not entitled to the benefit of the doubt, and has the Commission the authority and power to arbitrarily deny his charge, where it cannot, with reasonable certainty, say that the charges are unreasonable and unjust for the service rendered?

It may be suggested that there is a difference between the

rights of the proprietor in cases "in which the public service is distinctly intended and rendered, and those in which, without any intention of public service, the owners have placed their property in such a position that the public has an interest in its use."

It is conceded that there is a difference in many respects between these two classes of property, but it is denied that there is any difference or distinction *with respect to the question of rates or charges*. So long as the government itself refrains from performing these services and permits these enterprises to be exploited by private means and private enterprise, the right of the proprietor to make a profit therefrom is as sacred as is that of the proprietor of any other business enterprise. Certain it is that a telephone business is no more of a public service than a railroad; and the whole argument that there is a distinction, *as to profits to be made*, between the rights of the owner of property in which the public service is distinctly intended, and the rights of the owner of property in which, without an intention of public service, the owner has placed his property in such a position that the public has an interest therein, is forever put at rest by Mr. Justice Brewer in the case of *Reagan* v. *Farmer's Loan & Trust Company*, 154 U. S. 409, where it is said:

> "They who invest their money in railroads take the same chances that men engaged in other business do of making a profit from the carrying on of their business; and, as appears from other cases submitted to us with this, some of the railroads in the State of Texas have operated at a constant loss. But such possibilities of loss are simply the natural results of all business freely carried on, against which the law is powerless to afford protection. Very different are the considerations which arise when the strong arm of the law is invoked to compel parties engaged in legitimate business, and business which cannot be abandoned at will, to so reduce their charges for service as to make the carrying on of that business result in a continued loss. In the one case the law is powerless to prevent injury; in the other it is used to work injury. Counsel suggest that the State itself may construct and

operate railroads, and then may properly make rates so low that the business is done at a loss. They refer to the postal system of the United States, which, carried on for the common welfare, not infrequently results in a loss which is made good out of the public treasury. But the parallel is not good. In the case suggested the loss is cast through taxation upon the general public, and all bear their proportionate share of that loss which is incurred in securing a common benefit, while the scope of this legislation is to secure such common benefit at the expense of a single class. The equal protection of the laws—the spirit of common justice—forbids that one class should by law be compelled to suffer loss that others may make gain. If the State were to seek to acquire the title to these roads, under its power of eminent domain, is there any doubt that constitutional provisions would require the payment to the corporation of just compensation, that compensation being the value of the property as it stood in the markets of the world, and not as prescribed by an act of the legislature. Is it any less a departure from the obligations of justice to seek to take not the title but the use for the public benefit at less than its market value?"

It is, therefore, insisted that appellant, in this case, has no authority or power to prevent appellee charging any price it desires for its service, so long as it is not clear that such charges are unreasonable and amount to extortion.

The framers of the Louisiana Constitution must have been admonished that this administrative board might lose sight of the fact that the proprietor of the business—the one risking his capital in a precarious undertaking, the one furnishing judgment and foresight in discerning the probable value he might build up in his business, the one providing the skill and ability for the construction and operation of the property—has certain rights, and wisely provided that the acts and orders of this board should not be final, and that the growth of any lawful business should not be arrested, because the Commission might differ with the proprietor as to the reasonableness of his charges for his services. And, so it was provided that, if any party was "dissatisfied with the decision, or fixing of any rate, classification, rule, charge,

order, act or regulation adopted by the Commission, such party might file a petition, setting forth the cause of objection to such decision, act, rule, rate, charge, classification or order, or to either or to all of them in a court of competent jurisdiction, at the domicile of the Commission, against the Commission as defendant." (Article 285.) And in Article 286, it was further provided "that whenever any rate, order, charge, rule or regulation of the Commission is contested in court, as provided for in Article 285 of the Constitution, no fine or penalty for disobedience thereof or disregard thereof shall be incurred until after the contestation shall have been finally decided by the courts, and then only for acts subsequently committed."

In *Railroad Commission* v. *Kansas City, &c., Company,* 111 La. 133, it was held that the action of the Commission is to be reviewed, and the opinion of the court substituted for that of the Commission.

It is thus seen that a bi-form system of regulation has been provided in Louisiana: In the first instance, the Commission acts; and then if any party in interest be dissatisfied, his cause may at once be removed to any court of competent jurisdiction at the domicile of the Commission, and against the Commission as defendant, where the cause is docketed and tried *de novo* upon a record to be made up under the direction of the court.

It is quite similar to the Texas Act reviewed by this Court in *Reagan* v. *Trust Co., Supra.* It may be likened to an *eminent domain* proceeding; there is first a jury of view and an appeal at the instance of either party, where the cause is tried *de novo.* Under the Louisiana scheme the judgment of the Court is substituted for that of the Commission in all cases where any party at interest desires to pursue his remedy, and therefore it is that this Court is called upon to determine for itself the question of whether the rates in force by appellee prior to the action of the Commission were so unreasonable as to constitute extortion and

as to result in an unfair price for its service being exacted from its patrons in Louisiana.

In *Reagan* v. *Trust Co., Supra,* this Court said:

> "It was, therefore, within the competency of the Circuit Court of the United States for the Western District of Texas, at the instance of the plaintiff, a citizen of another State, to enter upon an inquiry as to the reasonableness and justice of the rates prescribed by the Railroad Commission. Indeed, it was in so doing only exercising a power expressly named in the act creating the Commission."

It is admitted that many of the decisions of this Court sustain the proposition that, where the action of a Commission or administrative board of a State in fixing rates is brought under review in this Court, there is a presumption that the rates so fixed are reasonable and just, and that the question is not whether the rates fixed are such rates as in fairness and justice the administrative board should have fixed, but the sole inquiry is whether they are so low or so unreasonable as to deprive the proprietor of his property without due process of law, and as to deny to him the equal protection of the law. This, for the reason that this Court is not authorized to substitute its opinion and judgment for that of the Commission, but is confined to the single question of whether the rates fixed by the Commission violate the Federal Constitution.

But the inquiry in this case is much broader, and under the Constitution of Louisiana the judgment of this Court is substituted for that of the Commission. The question to be determined in this case is whether or not the charges for telephone toll messages claimed by appellee are reasonable, or, are so unreasonable as to justify a reduction in order that appellee's patrons may not be subjected to extortion.

VIII.

REASONABLENESS OF RATES ADOPTED.

The sole controversy is as to the reasonableness of the rates voluntarily adopted by appellee, or the unreasonableness of the rates adopted by appellant. The petition in this case asserts the reasonableness of the rates which appellee had voluntarily established when it first entered the State to do business, and denies the reasonableness of the rates established by the Commission in order 552; whereas, appellant asserts the reasonableness of the rates adopted by it in order 552, and denies the reasonableness of the rates theretofore approved by it, and which had been voluntarily established by appellee.

So that, aside from the question as to where the burden of proof may rest, the inquiry is as to the reasonableness or unreasonableness of the rates established by appellee and the rates established by order 552. If the one be reasonable, then the other is unreasonable, and it is not material whether the case be considered from the standpoint of the reasonableness of the one or the unreasonableness of the other.

The basis of computing rates for telephone toll lines is not in dispute. The same basis is adopted by appellee and appellant and this is the universal method of establishing such rates. The only difference existing between the parties is whether the rate shall be one-half of one cent per mile, air line distance, for a three minute conversation between any two points, or whether it shall be some other amount. The air line basis is agreed upon; the initial time of conversation, three minutes, is agreed upon; the plan of charging according to mileage is agreed upon; and the only difference is as to what the charge per mile shall be.

The reasonableness or unreasonableness of this rate is essentially a question of fact, and is the only question of fact to be

determined on the record. If this fact can be determined by direct proof, there is no reason why indirect or circumstantial evidence should be resorted to. If it can be established that the rate is in and of itself reasonable, the inquiry is at an end. If it cannot be shown that it is unreasonable to charge a patron one-half of one cent per air mile for a telephone conversation of three minutes between any two points in Louisiana, the controversy is likewise at an end.

This is the way appellant undertook to solve the problem, in the language of the trial Judge:

> "The complainant is required by law to file an annual statement with the Commission showing, among other things, the value of its property in Louisiana and the net amount realized from its Louisiana business. On the basis of the value shown by these statements, the complainant was making from ten to fifteen per cent a year. The Commission was of opinion, therefore, that on its own showing the profits made by the complainant were unreasonably large, and accordingly made the reduction contained in Order 552. Mr. Barrow admits that these annual statements of the complainant showed only the valuation placed on the Company's property in Louisiana for the purposes of taxation and that such valuation of the property was not in his opinion its real value. Yet the reductions ordered were based solely, so far as appears, on the relation between the valuation so shown and the profits made by the Company."

Upon the contrary, appellee has shown the following facts without dispute or controversy:

That its rates for telephone service were established when it first entered the State in 1898, when it was weak and first sought the public's patronage in competition with the usual and customary methods of communication between distant points, and that they have continued the same to the present time; that they are the same rates that it has established in Illinois, Indiana, Kentucky, Tennessee and Mississippi; that the rates charged

in Louisiana are the same in most cases, and less in many cases, than the corresponding rates charged under similar circumstances for similar service by telephone companies elsewhere; that no telegraph company takes a message of ten words or less to be transmitted between any two points, however near together, in the State of Louisiana, without exacting a charge of twenty-five cents for sending it, and a like charge for receiving a reply; that the conditions surrounding the construction, maintenance and operation of this property in Louisiana are less favorable to the telephone company than elsewhere in the States in which appellee conducts its business; that the service is worth to the patron all he is asked to pay; that the patrons of appellee in Louisiana have voluntarily chosen this means of communication as being superior and of more value than any other known means of communication between distant points, and that this facility has been brought by appellee from a mere scientific toy to where it is regarded in the business and social affairs of the people of that State as a public necessity. In the petition filed in this Court in March by appellant seeking to have this case advanced and speedily heard, it is stated:

> "That the toll line service in Louisiana is of considerable importance and proportions and the *demand therefor constantly increasing*, as appears from the record herein. *It has become a public necessity.*"

Appellee has further shown that its properties were constructed economically, prudently, and with good business judgment, and cannot be duplicated at the present time within twenty-five per cent excess of their cost, owing to the higher price of material, labor, etc.; that its properties are prudently, skillfully and economically operated; and that order No. 552 singled out, by name, appellee, and undertook to reduce its rates, without reference to either of the other two companies doing business in that State.

Under these facts it is insisted that nothing more is needed to show either the reasonableness of appellee's charges or the

unreasonableness of the reduction made by appellant. Under these facts it is immaterial what profit appellee has made or is making in Louisiana.

In *Canada Southern Railway Co.* v. *International Bridge Company*, L. R. 8, App. Cas. 723, Lord Chancellor Selbourne thus expressed the decision of the House of Lords:

> "It certainly appears to their lordships that the principal must be, when reasonableness comes in question, not what profit it may be reasonable for a company to make, but what it is reasonable to charge to the person who is charged. That is the only thing he is concerned with. They do not say that the case may not be imagined of the results to a company being so enormously disproportionate to the money laid out upon the undertaking as to make that of itself possibly some evidence that the charge is unreasonable with reference to the person against whom it is charged. But that it is merely imaginary. Here we have got a perfectly reasonable scale of charges in everything which is to be regarded as material to the person against whom the charge is made. One of their lordships asked counsel at the bar to point out which of these charges were unreasonable. It was not found possible to do so. In point of fact, every one of them seems to be when examined with reference to the service rendered and the benefit to the person receiving that service, perfectly unexceptionable according to any standard of reasonableness which can be suggested. That being so, it seems to their lordships that it would be a very extraordinary thing indeed, unless the Legislature had expressly said so, to hold that the persons using the bridge could claim a right to take the whole accounts of the company, to dissect their capital account, and to dissect their income account, to allow this item and disallow that, and after manipulating the accounts in their own way, to ask a court to say that the persons who have projected such an undertaking as this, who have encountered all the original risks of executing it, who are still subject to the risks which from natural and other causes every such undertaking is subject to, and who may possibly, as in the case alluded to by the learned Judge in the Court below, the case of the Tay Bridge, have the whole thing swept away

in a moment, are to be regarded as making unreasonable charges, not because it is otherwise than fair for the railway company using the bridge to pay those charges, but because the bridge company gets a dividend which is alleged to amount, at the utmost, to fifteen per cent. Their lordships can hardly characterize that argument as anything less than preposterous."

In *Parkersburg & C. Co.* v. *Parkersburg*, 107 U. S., 691, Mr. Justice Bradley, delivering the opinion of this Court, said:

"It is also obvious that, since a wharf is property and wharfage is a charge or rent for its temporary use, the question whether the owner derives more or less revenue from it or whether more or less than the cost of building and maintaining it, or what disposition he makes of such revenue can in no way concern those who make use of the wharf and are required to pay the regular charges therefor; provided, always, that the charges are reasonable, and not exorbitant."

Where is the distinction between renting a wharf and renting a pair of telephone wires? What difference does it make whether the customer is using a bridge and paying a reasonable charge therefor, or whether he is using telephone apparatus and paying a reasonable charge for such use? And can it be said that a charge for a telephone toll message is unreasonable, unfair and unjust, or extortionate, when the business man passes by the postal service, the express service, the telegraph service, the messenger service, the railroad service, steamboats and other means of communication, and voluntarily selects this means of communication and is willing to pay the charge demanded therefor? If its charges were not reasonable, if its customers did not make a better bargain with it than with any other of its competitors, it would be unable to secure and hold its patronage.

There are some facts of common knowledge which cannot be ignored. Express companies were established to transport packages more rapidly than freight trains could possibly carry them. It resulted in the business public selecting, by their own option,

this means of speedy transportation, and they were willing to and do pay the increased price for the service. The postal service takes a communication for two cents to any part of the country, and brings back an answer for the same amount. The telegraph companies undertake to transmit a written message and receive a reply in a much more limited time, and patrons selecting it are willing to pay the increased price therefor. Certain passenger trains in this country are scheduled to travel at a very high rate of speed. Patrons use these trains and are willing to pay the increased price therefor. The telephone company has outstripped them all. It undertakes to annihilate time and distance, and to furnish facilities for conversation between any two points in its territory. Its charges cannot readily become extortionate; because, the moment they become so, its patrons at once shift to some other means of communication. And it is by no means true that the patronage is due merely to the fact that it renders possible a conversation between distant points, but the character of construction, the character of the operating force, the ease and rapidity with which the service is given, and the satisfactory service which it affords to its patrons, are the controlling factors in securing a patronage.

In *Cotting* v. *Godard*, 183 U. S., page 97, it is said:

"It was found, however, that the charges made by the defendant were no greater (and in many instances less) than those of any other stock yards in the country. Nothing is stated to outweigh the significance of that finding. While custom is not controlling, for there may be a custom on the part of all stock yards companies to make excessive charges, yet in the absence of testimony to the contrary, a customary charge should be regarded as reasonable and rightful. In *Gunning Law of Tolls*, the author says (p. 61): 'Long usage and acquiescence in one uniform payment for toll is undoubtedly cogent evidence that it is reasonable.' In *Shepard* v. *Payne*, 12 C. B. (N. S.) 414, 433, Willes, J., said: 'A fee need not be of a fixed and ascertained, but may be of a reasonable amount; and, exercising the power conferred upon us by the case, to draw inferences of fact, we may conclude

that, if the claim can be sustained in point of law, it was in fact for a reasonable fee. If so, then, looking to the amount established for similar services by other officers, and remembering what fees have been paid and received within the memory of us all in the Courts of Westminster Hall and at the Assizes, we think there can be little doubt that the fees in question, so far as amount is concerned, are in fact reasonable."

In *Louisville & St. L. R. R. Co.* v. *Wilson*, 119 Ind., 352, 358, is this language:

"The law makes it the duty of every common carrier to receive and carry all goods * * * * and authorizes a reasonable reward to be charged for the service. The amount to be paid is, in a measure, subject to the agreement of the parties; but when the amount is not fixed by contract, the law implies that the carrier shall have a reasonable reward, which is to be ascertained by the amount commonly or customarily paid for other like services. *Johnson* v. *Pensacola & P. R. R. Co.*, 16 Florida, 623; *Angell, Carriers*, Section 392; *Lawson, Carr.*, Section 125."

If the charge be the usual and customary one for similar service, the profit that may be made is not material, *unless* it be so great as to indicate unfairness; and even then it is only *some* evidence, and it may be explained away. It by no means determines the fact of reasonableness or unreasonableness. It is merely one piece of evidence for or against the reasonableness of the charge. The amount of profit depends very largely upon the question of skill, good business judgment, proper management, foresight, energy and upon many other things that contribute largely to the cost of giving the service, as well as to the value and character of the service rendered. A prudent, economical and skilled management may give a far better service, while employing no greater capital, and while earning no greater return. One management may make the same charge for its service, and at the same time realize a larger per cent of profit than another concern that is less skillfully and prudently managed.

The right to earn more in this way is recognized and applied in the case of *Cotting* v. *Godard*, 183 U. S., 79.

There a legislature passed a statute reducing the charges to be made by a stock yards company having a certain volume of business. The record showed that the charges in and of themselves were the same as those exacted by other companies throughout the State doing a less volume of business. The larger company, by reason of its attention to business, and by reason of the skill and ability of its management, had built up a large business—a business not created by charging unreasonable rates, but established solely by attracting trade into its channels, and by such other legitimate means, thereby securing a larger volume of business, and correspondingly increasing its profits.

This court held that this statute violated the equal protection clause of the fourteenth amendment; and in its opinion the court, after stating the facts, used this language:

> "Is it true in this country that one who, by his attention to business, by his efforts to satisfy customers, by his sagacity in discerning the probable course of trade and by contributing of his means to bring trade into these lines, succeeds in building up a large and profitable business, becomes thereby a legitimate object of the legislative scalping knife? Having created the facilities which the many enjoy, can the many turn around and say: 'You are making too much out of these facilities, and you must divide with us your profits?' "

It is conceivable, and is a fact, that even between corporations or persons rendering identically the same service, having identically the same capital, and making identically the same profit, there is a difference in the value of the service rendered by one and the value of the service rendered by the other. For example, one telephone company may have constructed its toll lines with good business judgment, with skill and with the greatest economy; another may have constructed its toll lines less skillfully and with less judgment; so that the service rendered by the one line is far superior to the service rendered by the other

line. It cannot be denied that a patron using a good line, the well-managed and skillfully operated line, receives a better service and more value from that use than the patron of the line less skillfully constructed and operated. Therefore, the proprietor of a business, practicing no extortion, and only asking a reasonable charge for the service rendered, is entitled, though he serve the public, to the opportunity of trying to make as much profit out of his business as the proprietor of any other business, whether it affect the public or not; and no different standard can be erected for the proprietor of a business serving the public than for the proprietor of a business not serving the public. Equal rights and equal opportunities to exploit his talents, equal rights and equal opportunity to show his worth as man, to display his skill, ability and business judgment, and to reap the reward so justly and fairly earned, is the right of every citizen. If it be held that a certain per cent of profit is all the reward that the proprietor may even try for, a limitation is at once placed upon his energy, zeal, ability, judgment and manhood. When the limit of profit has been reached by him in his business, he at once becomes indifferent to the character of service he renders, to economies in the business, to improvements in the service, to pleasing his patrons. And at the same time the greatest force and the greatest power in the upbuilding and prosperity of the country is stifled—namely, the individual, who should have no restrictions or limitations placed upon his hope of reward by exploiting his talents.

The example has been set by the government itself. It guarantees to every individual the absolute monopoly and the absolute control of his invention, covering a long period of time. He may use it or not, he may sell it, he may exploit it, he may do with it as he pleases, and the government guarantees him absolute immunity and protection.

If a limit of profit is to be placed upon the proprietor of a business serving the public and only charging reasonable rates, it must inevitably follow that the government itself must per-

form the duty, by taking over all kinds of business serving the public and operating them for the public good. Certainly that reproach ought not to be applicable to the great business interests of this country which is charged against many of the labor unions—the reproach of taking the slothful as the standard of efficiency instead of the diligent.

It has been decided by this court, and there can be no discussion of the fairness and justness of the holding, that the proprietor will not be allowed to earn any return upon his investment, if to do so results in an unreasonable charge for the service. The charge must be reasonable even though it result in the property being operated at an actual loss.

In *Covington & L. &c. Co.* v. *Sandford*, 164 U. S., 578, it is said:

> "The legislature has the authority in every case where its power has not been restrained by contract, to proceed upon the ground that the public may not rightfully be required to submit to unreasonable exactions for the use of a public highway established and maintained under legislative authority. If a corporation cannot maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the public."

If then the charges be reasonable, and the public be given full value in service for every dollar paid, why should the proprietor be required to reduce his charges because his profits are large?

And applying these suggestions to the case under consideration, the record discloses that certain citizens have taken a new tool in the affairs of mankind, and educated the people of Louisiana to its use; that they have provided a new and improved means of communication, which has so far outstripped all of its competitors that it is now referred to as "a public necessity;" that they have risked their money in a new enterprise; that they have taken all the chances of disaster and failure; that they have,

by their attention to business, by their efforts to satisfy customers, by their sagacity in discerning the probable results of their exploitations, by building properties and offering them to the public, and charging only reasonable rates for the service, made their business a success; that at the same time they have zealously, diligently and earnestly striven to serve and satisfy their patrons, to invest additional sums and continue to develop and exploit their business, and to offer these improved facilities to the people of Louisiana; and that these investors are now to be denied the right to receive therefrom even as much as is earned and received generally by business people in that State with far less risk of loss. If this can be justified under the law, then what becomes of the constitutional guarantee that the proprietor of this business is entitled to the equal protection of the law?

If it could be shown that, in all States of the Union, and in all the nations of the world, there was a uniform charge for toll service, in the absence of any other proof, can it be doubted that such a charge would be considered reasonable and just? If it could be shown that any particular article of merchandise was uniformly sold throughout the world at one fixed price, would it not be conclusive evidence, in the absence of any other proof, that the price was reasonable; provided, of course, the particular article was made by different concerns, and was not under a patent or other restriction giving the exclusive control of the price to one concern? In this case, there is no evidence that the charges are unjust or unreasonable. There is evidence in abundance to show that the charges are reasonable in and of themselves, and are the customary charges, or less than the customary charges, made for similar service by other companies throughout the country.

It is therefore insisted that what capital appellee has invested in the State, what its expenses are, and what its profits are, are wholly immaterial subjects of inquiry in this case.

The service rendered is worth the tolls charged upon any basis or theory that can be imagined, and it is earnestly insisted that that at last is the sole question to be determined in the case.

However, if the accounts of appellee are to be dissected and analyzed; if its meagre profits are to be considered; if the skill and ability with which its properties have been constructed, maintained and operated is to be considered and determined; if the telephone business generally is to be considered, so as to ascertain whether or not it be a precarious or hazardous business; if it is a question of whether the telephone business generally has been a profitable or unprofitable one, the evidence in this record, without dispute, and without controversy, makes the result the same.

It is shown that the telephone business in the United States is hazardous and precarious, and it is a fact that the investing public are extremely timid in entering the field. The people of Louisiana have declined to invest their money in the business, because they could use it more profitably in other lines of commerce.

The record abundantly shows that every possible economy has been exercised in the construction, maintenance and operation of this property; that the effort of the management and its employes has been untiring and unceasing to secure and merit its patronage; that it has never paid to its stockholders in any year exceeding seven per cent upon the actual money invested in the business, and that this has only been done by withholding from its stockholders a fair return upon their investment in the past and using these funds in building up its plants and extending its business; that it has property costing twenty-five per cent less than its present value; that it has in its capital account no working capital or funds for the purpose of enabling it to operate these properties; that it has added nothing for its years of toil in building up and developing the business in Louisiana; that it has added nothing of value for its

rights of way and its so-called franchises with the various cities in Louisiana in which it conducts its business; that it has added nothing to its capital account for its good will as a going concern, and that its profits have been less than the ordinary rates of interest charged and obtained by lenders of money in Louisiana, who take no substantial risks of loss, who are required to exert no skill or ability, who are not threatened upon every side with competition by concerns bidding for patronage, and who decline to risk their capital in so precarious a business as telephone property, and yet it is said that the Constitutional guarantee of the equal protection of the law cannot be invoked to arrest the hand of an administrative board clothed with no other authority or power than that of preventing extortion and unjust discrimination, and which undertakes, without any facts or knowledge of the business, to (in the language of the trial Judge), "guess" off a tariff of charges which will still further deplete its revenues.

The question of what return the proprietor is entitled to make, or what return the proprietor shall be authorized to trade and traffic with the public for, with the hope and expectation of profit, is one that differs according to the intrinsic character of the business. In the first place, the right to make certain charges by no means secures the business. After a merchant rents a house and offers his goods for sale, the problem before him has just begun, and that is to secure customers for his goods, and so it is with the proprietor of a property serving the public, the right to demand certain charges for certain services by no means binds the public to pay these charges or to make use of such service. The proprietor with authority to make certain charges is only clothed with authority to try for business, and the serious problem then confronts him of inducing the public to patronize his facility instead of patronizing the facility of some business rival.

The investing public has determined the rate of interest and the return that it is reasonable and right that the proprietor

of any business shall receive for the use of his money. Securities of the government sell upon the open markets of the world on a basis of less than two per cent net return; State securities on a basis of about three per cent; municipal securities on a basis of four and five per cent; steam and street railway on a basis of four to six per cent; bonds based upon industrial plants carry a higher rate of interest; and stock in various enterprises is expected to yield a still larger return. There must be a good reason why this is so generally true. The brightest minds and the most sagacious investors determine these questions, and they of course take into consideration the risk assumed, and the greater the risk the greater the reward that is demanded for assuming it. By the concurrent judgment of business men, the profit must be commensurate with the risk taken.

With the telephone property there are problems which are not met with in any other known business; as that it must continually expand and must continually secure new capital with which to extend and develop the business. The credit of the company is of vital importance, because when that is gone, or is seriously impaired, it is unable to get new capital and its growth is stopped. The properties are of a doubtful and unstable character. The danger of new inventions, of new methods, of new developments in the art of telephony cause the conservative investor to consider whether the properties in which he is asked to invest his money may not a year hence be junk. When the property is once constructed it is of no use whatever except as a going concern, it cannot be taken down and used in any other way; its wreckage value is only a fractional part of its cost. Therefore, from the investor's standpoint, a telephone property must yield a higher return than is customarily received from less hazardous investments.

The people of Louisiana themselves have determined this question of fact for the court, for they, who live with the property and use it, and who take advantage of its facilities and economies, cannot be induced to risk their money in the business.

Appellant clamors that they want more telephone lines, and that the telephone is a public necessity, and yet the citizens of their own State decline to so far aid this public necessity as to hazard any of their money in it.

But if the principle be applied that the proprietors of this business who have invested and risked their capital for the benefit of the public are not entitled to earn the same return for their labor and their capital as other business men, and if the question be considered solely from the standpoint of the public or users of the facilities, yet even in the interest of the public, the per cent of net profit must be sufficiently large to induce those who have money in their pockets to come into the business year by year to develop it and extend it, in order that it may accomplish the purpose for which it was started and may still further serve the people who, even now after so few years of development, already count that which in the beginning was nothing as a "public necessity." *They* are entitled to have the plant kept in a prosperous condition for their own use. *They* are entitled to consideration if the proprietor is not. *They* are entitled to have this plant extended and still further developed for *their* own use, and *their* interest in the business imperatively requires and demands that no mere guess shall determine what the charge for a particular service shall be. And if the Court should to-day determine what is a reasonable return on a telephone investment, what will the Court say two or three years hence when the public have changed their minds and declined to invest capital in the business on the per cent of profit now fixed by the Court? Can cases be prepared often enough to keep pace with changing conditions?

It is submitted that no particular profit can be prescribed; that it all depends upon the time and upon the conditions surrounding the business. The future is a sealed book—no man can tell whether telephone investments will demand a higher or lower return; no man can tell whether eight, ten, fifteen or twenty per cent will be reasonable or necessary to continue the

growth and development of the business. Conditions may change rapidly so as to enable a properly managed telephone company to secure unlimited capital at four or five per cent. What the future will be is purely conjectural, and, therefore, it is submitted that this court cannot undertake to say what will be a reasonable return for the future. At most, it could only determine what is a reasonable return at the present time.

Thus far the case has been discussed upon the assumption that the sole question to be determined was the reasonableness of appellee's charges for service rendered, or the unreasonableness of the Commission's rates; and that these facts are fully sustained by the undisputed evidence, without reference to appellee's capital account, its expenses and its net profits.

If, however, all these matters are to be taken into consideration, and it is proposed from this data to determine what is a reasonable rate, the result can but be surmised, according as much or little weight is given to the various elements entering into the question.

If the proprietor of the business is permitted to fix such rates as reasonable men cannot say are extortionate, the inquiry is easy of solution. And he, after all, is best able and has the greatest incentive to do this. He has his capital at stake, and if he fixes his rates too low, he earns no reward; while if he fixes them too high, he takes the risk of destroying his patronage, which is his sole dependence for a profit. With all his intimate knowledge of his business; with his great desire and interest in discerning the future of the business, his expectations may not be realized and disaster may befall him. If so, it is his misfortune, and this risk he voluntarily assumes. If it results in the establishment of extortionate rates, there is always a plain remedy.

IX.

ELEMENTS TO BE CONSIDERED IN DETERMINING THE REASONABLENESS OF THE RATES BY CONSIDERING THE CAPITAL ACCOUNT, EXPENSES AND NET PROFITS.

In order to determine the reasonableness of the rates in the present case, it is not material what basis the court may adopt in determining the value of the property in use by appellee in Louisiana, nor how much may be allowed or disallowed in the various items of expense entering into appellee's accounts. But it is very material to ascertain what per cent of profit shall be allowed as a fair return for the use of this property.

Capital Account.

This court has said that the basis of all such calculations is the value of that which the owner employs for the public benefit. But this by no means solves the problem. How to determine that value is a very complicated question, and there is no fixed rule, either in the decisions of the court, or in the rulings of the various administrative boards that are charged with the duty of fixing rates.

This value may be the original cost, or it may be the present value. If it be fixed at the original cost, then how much shall be deducted for deterioration, where the property has not been properly maintained? And what shall be allowed for additions and improvements? And what shall be allowed for unwise construction, bad management in construction, an unnecessarily large plant, or for a portion of the plant not yet in use? And how much shall be allowed for the cost of unsuccessful experiments, and for bad judgment in making contracts for construction? If it is to be determined upon the basis of outstanding obligations, then the question of fictitious valuation comes in, and

the inevitable inflation or depression of the market value of the securities at the particular time of the investigation. How much of the market value represents hope of the future, or loss in the past? Shall the sale of a fractional part of the securities in the open markets establish the market price for the whole? Were the securities sold at a discount or for a premium? In such case these are questions which must be answered.

If, on the other hand, the present value is taken as a basis, shall it be the cost of reproduction at the present time, and how shall this be determined? How much should be added above the cost of the material as a contractor's profit? How can all the factors entering into the cost of reproduction be ascertained? And then what per cent shall be added to this for unknown and unforeseen contingencies, injuries to persons and properties and compensation therefor? Shall anything be added as the value of the franchise, or the added value as a going concern or going business? Shall anything be added as compensation to those who conceived and exploited the business? Are they entitled to a reasonable profit for their skill and enterprise, and the risk that they assumed?

All these and many other elements enter into the problem of determining the basis of value, and the decisions are hopelessly in conflict. Each case must depend upon its own facts, and in each instance the determination must be left to the discretion and judgment of whichever one of these administrative boards may happen to have jurisdiction of the case. The owner cannot himself determine these matters with reasonable certainly, and certainly the administrative board is even less able to do so.

Expenses.

And so it is with the expenses of conducting the business. Every business necessarily involves expense in operating and maintaining the property. The amount depends, of course, upon the skill of the management, the industry and ability with which

the employes are selected and directed, the salaries of the officials and of the employes, the expenses of getting business, the cost of advertising, etc., the amount of improvident expenditures, the making of a proper allowance for depreciation, extravagances or economies in the purchase of materials and supplies and care or wastefulness in traveling expenses. And each of the items involved in the maintenance and operating charges must be critically analyzed before an opinion can be formed as to whether they are reasonable and proper, which requires the exercise of good judgment. All of this has to be done by those who have no knowledge of the business, and who cannot determine, after a lapse of time, whether the expenses were reasonable and proper or otherwise.

The record shows that the expense of appellee's property in Louisiana includes the following items: (1) *General Expenses*, including Louisiana's proportion of the general expense, which is prorated to the various States, including taxes, postage, printing, stationery, legal disbursements, uncollectible accounts, and miscellaneous general expense; and, (2) *Operating Expenses*, including salaries of operators, clerks, collectors and solicitors, advertising, traveling expenses, rent, light, heat and miscellaneous expense; and (3) *Maintenance*, including salaries and wages of managers, agents, linemen, laborers, cost of materials used in maintaining property, labor, traveling expenses, damage and compensation, insurance, rent, light, heat and miscellaneous expense.

All these items must be dissected to determine whether the management has been careful or improvident, and whether it has been extravagant or economical.

Net Earnings.

After having determined the basis of value and analyzed the expense account, the problem of determining the net profits still involves matters of grave importance, and by no means free from

difficulty. In other words, the balance shown on the books between the gross receipts and the gross expenses incurred by no means determines the net profits.

This record shows, and it is undeniably true, that apparnet profits are not always real profits and that no prudently managed business can pay out in dividends the difference between the gross revenue and the gross expense incurred. The public service corporation cannot no more afford to do this than an individual can afford to expend his entire income or salary; if either one does, it is certain that a time will come when he or it must either encounter debt or an impaired capital. Earnings in prosperous years must be husbanded for the purpose of paying dividends in less prosperous years. These are all matters of discretion and judgment, depending very largely upon the ability, skill and knowledge of the management; and equally skilled managing officers, with equal knowledge of the business, may differ as to what part of the profits should be paid out as dividends. So that it becomes important to determine with respect to a telephone property, first, what dividend is necessary to satisfy capital, and thus supply funds for future development; and second, what part of the earnings may safely be used as a dividend fund, and what part set aside to insure a continuation of the property as a going concern.

This record shows that, with respect to appellee's property, there is no margin of safety; that any reduction in its earnings will inevitably result in disaster; that the decreased net earnings have already occasioned alarm among its stockholders, and have as a result brought about an almost complete cessation of development; and that, unless the properties can show a better earning in the future than in the past, stagnation is sure to result.

It is shown that the business is regarded in the money markets of the world as hazardous, and as beset with unusual vicissitudes and dangers, and that the property must show a

proper earning capacity in order to continue its usefulness by further development. It is shown that large parts of the State of Louisiana are wholly undeveloped, and that great pressure is brought to bear upon the management to develop these places; and, indeed, the petition of appellant to advance this case states that "the demand therefor is constantly increasing." It is shown that the prevailing rate of interest in Louisiana, and especially in New Orleans, is seven per cent, and that the laws of that State permit its citizens to demand eight per cent for the use of their money. Therefore, if only the prevailing rate of interest in that State be regarded as a reasonable return to the stockholders, then *at least ten per cent earnings must be shown in order to justify the management in paying eight per cent dividend;* and it is submitted with great confidence that no reasonable man will say that a telephone property, economically, skillfully and prudently constructed, maintained and operated, is not entitled to that rate of return, or that charges fixed so as to produce no greater return are unreasonable and extortionate.

It is further submitted that, in view of the uncertainties existing in determining the value of the property, the proper allowance for expenses and the return of net profit that should be made, the "twilight time" should rather be yielded to the owner of the property, and that the basis of all calculations should be to determine whether the rates fixed by the proprietor are extortionate; and that if it cannot be affirmed with a reasonable degree of certainty that the rates *are* extortionate, the proprietor should be permitted to continue the rates voluntarily established for the service.

When the facts of each particular case are carefully determined, and when the reasonableness of the rates established for the service are so nearly accurate as to become a matter of indifferent opinion, it ought to be the sacred right of the owner to exercise *his* opinion. The government should decline to impose its opinion to the possible prejudice of a citizen's property.

If the benefit of the doubt and uncertainty be yielded to the proprietor, the public interest is thereby promoted, because, if it be undertaken, either by an administrative board or a court, to determine with accuracy what shall be reasonable rates, by ascertaining the value of the property, dissecting the expense account, and then determining what the per cent of profit shall be, the risk and chance of a mistake, if against the proprietor, results in disaster. So, if the doubt be resolved in favor of the proprietor and against the patrons, no one of them is seriously inconvenienced. Surely it is better that many patrons be slightly inconvenienced than that an established business be destroyed or overtaken by disaster, and surely it is in the interest of the patrons that they take the chance of slight inconvenience, rather than incur the certainty of the serious mishap, which is inevitable of the enterprise come to grief.

It is with respect to this particular case that this discussion deals. It is not pertinent to discuss the power of a court to remedy the wrong that may be done a business where the law-makers have confided to an administrative board the great power of pricing another's charge for service, and the courts are appealed to for protection under the Constitution. A wholly different question is then presented. The power of the court is then limited to the inquiry of whether the constitutional right of the proprietor has been invaded, and, unless the court can determine from the record that this *has* been invaded, the court is powerless to give relief. But, in cases where the law-makers have not provided that the administrative board shall have the absolute power to determine the reasonableness of rates, and where they have authorized an appeal to the courts from the findings and action of the administrative board, *then* the court *has* the power to determine for itself, *not merely* whether a citizen's property has been taken without due process of law, but whether the administrative board *has in fact fixed reasonable rates*. And in such cases, unless the court can, with reasonable certainty, say that the rates fixed by the administrative board

are reasonable, such rates should be set aside, and the rates established by the proprietor allowed to remain.

And in this class of cases the inquiry should be whether or not the rates fixed by the proprietor amount to extortion, and not whether, upon some nice calculation of the numberless elements entering into the determination, the rates fixed by the proprietor may possibly be a fraction of a cent too high. If this is a false doctrine, then the right of ownership is a mere shadow, without thinkable substance.

But it is earnestly submitted in this case that the *sole* question to be determined is whether or not the rates for telephone toll service are reasonable or unreasonable, in and of themselves, and that the question in its last analysis is with respect alone to the reasonableness of the charge for service, and that this question in this case is determined by direct evidence. If this be true, it is not necessary to resort to indirect methods of testing the reasonableness of the charges by undertaking to determine the basis of the value of the property, or the reasonableness or unreasonableness of its expenses, or the amount it should be permitted to earn, or what part of these earnings should be set aside as a reserve, and what part paid out to the stockholders in dividends.

The difficulties to be apprehended in arriving at the reasonableness of rates by ascertaining the capital account, dissecting the expenses of the business, making proper allowances for unforeseen and unknown contingencies and other elements of doubt, seem to be fully realized in appellant's brief. Indeed, the whole argument seems to be directed to convincing the court of the impossibility of arriving at reasonable rates upon any such theory, and owing to these difficulties the argument is that because this administrative board, by a simple comparison of tax values with net earnings has, in the language of the trial Judge,

"guessed" what would be reasonable rates, this action of the administrative board is so sacred and so far conclusive and binding upon the courts that Judges must sit as "fangless lions," powerless to prevent the wrong; and, in the closing sentence of appellant's brief, it is said: "Nor does this case present such a *flagrant*[1] attack upon property rights as will compel the court to say the Cumberland Company (Appellee) is or will be deprived of its property without compensation," which simply means that because the property has not been *entirely* confiscated the owner has no just cause for complaint.

Appellant overlooks the fact that the trial Judge *has* examined all this evidence, and *has* determined that the order of the administrative board is unreasonable. This appeal is to review *his* action, and not primarily the action of the administrative board.

However, it is respectfully submitted that, in cases like this, where the capitalization represents actual investment and is free from all kinds of fictitious increases, and where no unjust discrimination is shown to have been practiced, and only usual and customary rates are charged, which yield only a moderate return upon the actual investment, there can be no serious complaint as to the reasonableness of the charges, and that in such cases it will rarely be necessary to enter into an analysis of the value of the property, the reasonableness or unreasonableness of the expenses or the amount of profit.

The management of a property that is honestly organized and honestly managed, that only earns a moderate return on its actual cost, and that charges rates which cannot, by reasonable men, be said to be extortionate, should not be taken out of the hands of its owners and turned over to an administrative board

[1] Italics added.

to be directed and controlled. Rather the doctrine so often announced in recent years, and from those highest in authority, that a "good" corporation need have no fear of governmental supervision and control, should at least be given a fair trial.

It is respectfully submitted that the decree of the lower court should be affirmed.

DENEGRE & BLAIR,
WILLIAM L. GRANBERY,
Solicitors.

October, 1908.

FILED.
OCT 20 1908
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

No. 182.

October Term, 1908.

RAILROAD COMMISSION OF LOUISIANA, *Appellant*,

vs.

CUMBERLAND TELEPHONE & TELEGRAPH CO.

Appeal From the Circuit Court of the United States for the Eastern District of Louisiana.

REPLY BRIEF ON BEHALF OF THE RAILROAD COMMISSION OF LOUISIANA, APPELLANT.

WALTER GUION,
Attorney General of Louisiana, for Appellant.

E. HOWARD McCALEB, JR.,
Of Counsel.

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Appeal From the Circuit Court of the United States for the Eastern District of Louisiana.

REPLY BRIEF ON BEHALF OF THE RAILROAD COMMISSION OF LOUISIANA, APPELLANT.

On page 38 of our opponent's brief, it is said, that "aside from the question as to where the burden of proof may rest, the inquiry is as to the reasonableness or unreasonableness of the rates established by appellee and the rates established by Order 552. If the one be reasonable, then the other is

unreasonable, and it is not material whether the case be considered from the standpoint of reasonableness of the one or the unreasonableness of the other."

In the first place, the rates under Order 488 which became effective January 1, 1906, were adopted by the Commission, not by appellee. It may be, and no doubt, is true, that at the time of promulgation they were reasonable, but it does not follow that their reasonableness continues indefinitely. This is tantamount to saying: once the value of a service is established or once a rate is fixed, no advance or reduction ought thereafter to be admitted. If the argument is sound, then, what would be said of the clamoring by the railroads all over the country today, for an advance in rates because of hard times and a reduction in volume of their business? What would become of appellee's contention in asking for an advance in rates by suit No. 66, wherein the claim is made that the night and Sunday and submarine cable rates, etc., under Order 488 "are unreasonably low for the services rendered, and do not constitute a fair or reasonable compensation therefor" (R., p. 23)? Or, what would become of the judicial admission made in Suit 61 that under Order 488, the telephone subscribers "were and are, able to use said service at a price which did not and does not afford your orator a fair, just and reasonable compensation therefor?" (R., p. 3.) The error of such line of reasoning lies in failing to recognize the universal rule, that values constantly change. The price of cotton, of wheat, of corn, of silver, of every commodity fluctuates hourly, daily, yearly; why not the price of service? We need hardly demonstrate such a self-evident proposition.

In the second place, the reasonableness of the rates under Order 488 is not before the Court. The question is: are the rates prescribed by Order 552 unreasonable, and if so, why? We start out with the presumption in favor of their reasonableness and as has been said, "the case must be a clear one"

to overcome that presumption (176 U. S., 172, 173; 174 U. S., 754). Has appellee presented such facts as to warrant a judicial determination against the reasonableness of Order 552?

Now from the misstatement that Order 488 was established by the Company instead of the Commission, and the false premise that the rates therein prescribed are reasonable as also the *non sequitur* that Order 552 must be unreasonable, it is next said the rates under Order 488 are the same as elsewhere under similar conditions for similar service. (See appellee's brief, page 40.) This is denied, not only upon the testimony of appellee's president, not only upon all the facts appearing of record going to show a dissimilarity of conditions in Louisiana from other sections of the country, but because telephone rates or values in general, are based upon the maximum number of desired individuals a subscriber can reach, and the value of toll service is measured by capacity of line (R., p. 95) as also by time intervals and distances. In a thickly populated district there is more call-congestion on the lines, more conversation-traffic (if that term can be used) and hence the value of services there is not the same as in those districts where fewer calls are made. It is for this reason that pole-line mileage rates are comparatively higher than rates on air line measurement. So also, who will venture to say, that conditions in New York r Tennessee toll-line service, for instance, are the same as in Louisiana?

At best the inquiry as to service values can only arise in a case where, notwithstanding a public service company is operating at a loss, yet, if the existing rates are unreasonably high, a reduction under legislative sanction to reasonable rates commensurate with the value of the services will be upheld. Such is the *rationale* of the opinion in Covington, Etc. Turnpike Co. vs. Sandford, 164 U. S., 578, 596, 597, where it is said:

> "If a corporation cannot maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the constitution does not require to be remedied by imposing unjust burdens on the public."

And again in Reagan vs. Farmers Loan & Trust Co., 154 U. S., 362, 412:

> "It is unnecessary to decide and we do not wish to be understood as laying down an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable."

In that sort of a case the court would be justified in considering the rates for services in other localities under similar conditions, customary charges, long usage and acquiescence in one uniform payment for toll, etc., all of which facts are absent here—and then too, the burden of proof would rest upon the company to make out a case in this respect that is certain and not probable.

II.

The pursuit of false premise and *non sequitur*, as well as the "figure facts" contained in the record, has forced our opponents to assume a change of front in their attack on Order 552 different from that set up in the bill of complaint, by asserting the reasonableness of the existing rates as evidence against the reasonableness of Order 552 (Appellee's Brief, pp. 28 to 37). And in this, they are driven to say: "it is immaterial what profit appellee has made or is making in Louisiana." (See Appellee's Brief, p. 41.) To support their theory, Canada Southern Ry. Co. vs. International

Bridge Co., L. R., 8 App. Cas. 723; Parkersburg & C. Co. vs. Parkersburg, 107 U. S., 691; Cotting vs. Godard, 183 U. S., 79-97 (and cases there cited) are claimed as decisive.

A distinction between two sets of cases could not have been better put than in Cotting vs. Godard, 183 U. S., *supra.* There, the Court places on one side, those enterprises in which a purely public service is admitted or intended and on the other, those enterprises in which without any intent of or dedication for public service they are placed in such a position that the public acquires an interest in their use.

In those firstly stated, the reasonableness or unreasonableness of a charge involves the inquiry, first, has the legislature assumed control by fixing rates for such enterprise; second, are the rates fixed by it or under its authority, tantamount to a taking without just compensation, or if it is, then the third inquiry whether or not the nature and value of the service renders the charge justified, though it may be the business is operated at a loss, as was intimated in Covington Turnpike Co. vs. Sandford, 164 U. S., 596-7, and Reagan vs. Farmers Loan & Trust Co., *supra.* Briefly, the rule there is according to Smyth vs. Ames, 169 U. S.:

> "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is, that no more be exacted of it for the use of a public highway than the services rendered by it are reasonably worth." (See also Cotting vs. Godard, 183 U. S., p. 91.)

This is the rule for testing the reasonableness of charges for services performed by those individuals or corporations who are engaged in furnishing those conveniences to the public under legislative regulation of rates which the State could furnish in virtue of its governmental functions. But in cases where the legislature has not assumed the power of

regulation and fixing of rates of public service undertakings, that test is according to the common law (see authorities cited by appellee on pages 29 and 30 of brief) as was the case of Transportation Co. vs. Parkersburg, 107 U. S., 699, and Canada Southern Railway vs. International Bridge Co., L. R., 8 App. Cas., 723. In these cases there was no legislative action giving to a commission or otherwise of fixing maximum rates. Indeed, it is said (8 App. Cas., 723):

> "The legislature saw fit to entrust the Company with a general and unqualified power of making by-laws and regulations as to the use of the bridge and the terms on which it should be used in point of payment, and did not then at all events, think it expedient to fix any tariff or to impose any limit other than such, if any, as might be implied by law, namely, that the charges should not be unreasonable."

Here then, the power of fixing rates is expressly given to the Bridge Company which is not subject to any authority as to rate fixing except such as is implied by law. Neither the legislature nor any legislative board has seen fit to regulate this concern, and therefore only a right of action would lie in behalf of those who have paid tolls for the recovery of such as may be or have been exorbitant and it is no concern of these parties how much profits the company makes. Manifestly, in that case, the burden of proof would seem to rest upon the complaining parties to show that the rates established by the company were extortionate or unreasonable. As no legislative action fixing rates or regulating the company was taken, the cases are taken out of the rule announced in Smyth vs. Ames and kindred decisions.

Again. Where the business is not one of a purely public service but a "pursuit of merely private gain, wherein the owner has placed his property in such a position that the public has become interested in its use," the reasonableness

of a charge depends upon the value of the service and it matters not how much profits are made, the inquiry as to profits being incidental and only in aid of determining whether or not the charge is exorbitant. Cotting vs. Godard, *supra*, belonged to this class of cases, and whilst the court admitted the power in the legislature to regulate and fix rates to be charged by such an undertaking, admitted that the legislative "prescription of rates is *prima facie* evidence of their reasonableness," admitted the burden of proof to be upon the company, the test of reasonableness or unreasonableness of a charge made by such company must have reference to the value of the service rendered irrespective of the aggregate of profits. Indeed, six out of nine judges refused to express an opinion on the point, which does not give this branch of the Cotting case the position of authority, however persuasive it may otherwise be, the majority concurring in a reversal of judgment because the Kansas statute was in violation of the equal protection clause.

As this Telephone Company is undertaking to do that which is the proper work for the State to do, as it comes strictly within the definitions in Munn vs. Illinois, as it is a common carrier of news, "a common carrier in the sense in which the telegraph is a common carrier," and as the State Constitution has expressly included it in terms subject to rate regulation by the Commission, all the cases cited by our opponents have no application and the case here falls within the principles of Smyth vs. Ames and kindred decisions. (See Hockett vs. State, 105 Ind., 250.) Joyce on Electric Law, 2d Edition, Sections 274, 275, 276, 520, 521.

III.

Railroad Commission vs. Kansas City Southern, 111 La., 133, is cited as authority (1) against the presumption in favor of the Commission's orders, and (2) the court may

substitute its judgment for that of the Commission and is not limited in its inquiry as to whether or not any constitutional right has been impaired. That case involved no question of rate fixing. It was decided that in an action to collect a penalty for violating the Commission's order, the court would inquire into the reasonableness of such order towards reaching a determination as to whether or not the penalty should be enforced.

IV.

It is said on page 6 of appellee's brief that the receipts include both intra and interstate business. What were the receipts from interstate business? The only evidence of such is found on page 35 of the record, "(1906) Revenue from interstate tolls $66,906.46." If this sum for 1906 is to be thrown out then, as "domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business" (Smyth vs. Ames. 169 U. S., 540, 541), credit should be given intrastate receipts for such part or proportion of interstate expense against which domestic business is charged. The fact is patent on the record that interstate business is operated at a tremendous loss and exclusively at the expense of the domestic business. If the gross earnings show interstate receipts of $66,906.46, the expense account on any item of expense which includes interstate expense, when taken into consideration is conclusive evidence of the reasonableness of Order 552 and shows that domestic business is bearing the expense and losses of interstate business. On depreciation item alone, interstate business should be charged with 50 per cent of it, as also on the items of maintenance and general, together with a proportion of operating expense item. Are you going to say that the sums annually paid out for maintenance-reconstruction or the unexpended yearly reserve for depreciation, for sub-

stituting poles, copper wires, submarine cables, switchboards, ducts and aerial cables, etc., that carry interstate messages at the same expense to the equipment as intrastate messages must be paid for exclusively out of intrastate receipts, when interstate business is equally responsible for deterioration and decay of equipment? Take the 28 submarine cables crossing the Mississippi River with an average depreciation of 33 per cent on cost, and through which interstate messages pass, are you going to charge up the whole reconstruction of these cables every three years and which are included in maintenance to intrastate business?

Respectfully submitted,

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Of Counsel.

RAILROAD COMMISSION OF LOUISIANA *v.* CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 182. Argued October 20, 21, 1908.—Decided February 23, 1909.

Where diverse citizenship exists complainant may assert in a suit in the Circuit Court of the United States that rates fixed by ordinance are so low as to be confiscatory under the Fourteenth Amendment or unreasonable or unjust under the provisions of state law. Rates fixed by the body having jurisdiction, after investigation based on reports of the corporation rendering the service, are *prima facie* fair and valid and the burden of proof is on the complainant attacking them to show that they are confiscatory or unreasonable.

Where a public service corporation raises more money in a particular year than required for actual depreciation it cannot carry the excess to capital for the purpose of estimating the amount on which it is entitled to pay dividends in determining whether a rate is unconstitutional as confiscatory, and the onus of showing that this has not been done is on complainant where the books show that such an excess has been collected.

Quære, and not decided, whether it would be entitled to dividends on such excess if invested in extensions and additions.

While in some businesses where increased demand does not involve a corresponding increase in expense, increased profits may result from decreased rates, this rule does not apply to a business, such as that of a telephone company, where expenses are proportionately increased with increased demand and service.

Although complainant failed to prove its case, the bill will not be dismissed but a new trial ordered, as the rates have been in force and the inquiry can be founded upon their actual effect.

156 Fed. Rep. 823, reversed.

THIS case comes here upon appeal by the railroad commission, which was defendant below, from a decree of the Circuit Court of the United States for the Eastern District of Louisiana, enjoining the enforcement of certain rates prescribed by the

railroad commission of that State, for use by the appellee telephone company therein. The appellant was created under art. 283 of the constitution of the State of Louisiana; and art. 284 of that constitution authorizes it to adopt just and reasonable rates, charges and regulations governing and regulating, among other corporations, those operating the telephone within the State. The commission has the power to examine and compel the attendance of and to swear witnesses, and compel the production of books and papers, to take testimony under commission and to punish for contempt, as fully as provided by law for the District Courts.

Article 285 of the constitution provides that if any corporation subject to the commission is dissatisfied with its decision "fixing or adopting any rate, . . . the corporation thus dissatisfied may file a petition, setting forth the cause of its objection, in a court of competent jurisdiction at the domicil of the commission, against said commission as defendant, and either party to such action may appeal the case to the Supreme Court of the State without regard to the amount involved, . . ."

By art. 286 it is provided, among other things, that "whenever any rate, order, charge, rule or regulation of the commission is contested in court, as provided for in art. 285 of this constitution, no fine or penalty for disobedience thereto, or disregard thereof, shall be incurred until after said contestation shall have been finally decided by the courts, and then only for acts subsequently committed."

Under these provisions of the constitution the railroad commission had been created and was in operation, and on or about August 6, 1906, it established and promulgated certain rates for the complainant to charge for its services within the State of Louisiana, to take effect September 1, 1906. The complainant, immediately after the promulgation of the order and before the time when it was to take effect, applied to the commission for a rehearing before it, which was granted, but no evidence was taken on such rehearing, and the commission subsequently

reaffirmed the order and directed that it should take effect on the twentieth of October, 1906. Thereupon the complainant commenced this suit for the purpose of enjoining the enforcement of the rates established by the order, which is designated as Order No. 552.

In the bill filed by the complainant it was alleged that the complainant was a corporation organized and existing under the laws of the State of Kentucky and a citizen and resident of that State, and that the railroad commission of Louisiana was a corporation organized and existing under the laws of the State of Louisiana and was a resident of that State and of the district in which suit was brought, viz., in the Eastern District of Louisiana, Baton Rouge Division.

It was also alleged that prior to August 6, 1906, the complainant had in force and effect a tariff of rates between points in the State of Louisiana, which had been promulgated and put into effect by the railroad commission of that State; that such rates were entirely fair and reasonable in so far as the public is or was concerned, as under them subscribers were and are able to use said service at a price which did not and does not afford complainant a fair, just and reasonable compensation for its services.

It was also averred that while such rates were in force the commission, without making any investigation and without any evidence in regard to any of the facts necessary to reach a determination, and without any effort to obtain evidence in that direction, made and promulgated, on the sixth of August, 1906, the order known as Order No. 552, by which order it greatly reduced the rates in existence up to that time, and the former rates were thereby changed to the rates specified in the order, which order was to become effective after the first of September, 1906.

The complainant further averred that it had asked for a rehearing, which the commission granted, and thereafter, being still without evidence or investigation justifying the same, the commission reaffirmed the Order No. 552, and declared that

the same should become effective within ten days from the date of the second order, which was dated October 10, 1906.

It was also further averred that the rates which preceded the rates provided for in Order No. 552 were reasonable, just and fair to the public and not in any wise excessive, and under them complainant received for its services only a fair and reasonable return for the services rendered; that under the tariff of rates promulgated and sought to be enforced by the commission under Order No. 552 complainant would be required to render the services therein described at an unreasonable, unjust and unremunerative rate, which would not afford to it a reasonable return for the services rendered, and that it would thereby be deprived of its property without due process of law; that said proposed tariff was unjust, unreasonable in itself, and was not justified by any conditions, either concerning the services in question or by the financial or physical condition of complainant's property or affairs; that the orders of the commission complained of were unjust, unfair and unreasonable and unwarranted, not only with regard to the tariff as a whole, but with regard to each particular rate charged by said tariff; and that the tariff of rates, as a whole and in detail, constituted, for the reasons already set forth, a taking of complainant's property without due process of law and without compensation being previously made, contrary to and in violation of § 1, Art. XIV, of the Amendments of the Constitution of the United States and in violation of certain (named) articles of the constitution of the State of Louisiana of the year 1898.

For answer the defendant denied that there was no inquiry or proper investigation of the subject-matter prior to the promulgation of Order No. 552 of the date of October 10, 1906; it also denied that the rates established were unjust, unreasonable or improper, or that they would result in the taking of complainant's property without due process of law. Testimony was taken by depositions and upon the trial the court directed a final decree enjoining the commission from putting the rates in force as provided for in Order No. 552, and restraining the com-

mission from instituting any suit against the complainant for the recovery of any penalty by reason of complainant's failure to put into effect the rates in the order of the commission; and it was further adjudged that the tariff of rates specified in the order should be cancelled and declared to be null and void and of no effect. An injunction was issued pursuant to the decree. See opinion of Circuit Court, 156 Fed. Rep. 823.

Mr. E. Howard McCaleb, Jr., with whom *Mr. Walter Guion*, Attorney General of the State of Louisiana, was on the brief, for appellant.

Mr. William L. Granbery for appellee.

MR. JUSTICE PECKHAM, after making the foregoing statement, delivered the opinion of the court.

The complainant herein is a citizen of the State of Kentucky, while the defendant is a citizen of the State of Louisiana, and a case of diverse citizenship therefore appears on the record. The complainant is transacting its business in several States, in a territory which is said to be four hundred miles wide and one thousand miles long, beginning in Indiana and Illinois and extending through the States of Kentucky, Tennessee, Mississippi and Louisiana to the Gulf of Mexico. Its capital, from the time of its organization, to May, 1898, was $1,695,700. This capital was thereafter increased from time to time until February 1, 1907, from and after which it was $20,174,350, represented by stock issued from time to time, to that amount. This includes the amount invested in Louisiana. The evidence in the case shows that the company's affairs had been economically administered, and that its business had been conducted in the State of Louisiana, ever since its entrance into that State, with great care and economy; that the stock had not been watered; that its capital was contributed in cash and every economy possible had been practiced. Adverse criticism was

indulged in in the Circuit Court in regard to the price paid by the complainant for the property of the Great Southern Telephone and Telegraph Company, the price being, as alleged, too high, but the evidence is strongly to the contrary. And, again, the business that complainant is carrying on, the evidence shows, is regarded as hazardous by those familiar with its character, and as being still in an experimental stage with regard to the proper methods of operating, and also as to appliances and other things necessary to the conduct of its business. The property is subject to great and rapid deterioration from exposure to the weather and other causes. The profits in this kind of business are shown to be almost universally low. The complainant's charges for rates in Louisiana before the promulgation of the Order No. 552 were also shown to be as low as those of any of the companies in the country, and lower than most of them. Out of more than a dozen companies, which substantially cover the whole country, there is one which declares dividends of 7 per cent, others 6 per cent, 5 per cent, and 4 per cent, and some nothing, and some are bankrupt. The dividends of complainant have not been declared on any artificial capitalization or watered stock. Complainant has declared dividends as the result of its business through all the States, for the last few years, of 7 per cent. While it is contended by the commission that from the returns made by the complainant to it the complainant has realized upon its investment in Louisiana from 10 to 15, and even 20 per cent, yet on the other hand the complainant asserts that the returns on its investment in Louisiana have been less than 6 per cent during most of the time the complainant has been in the State, and ending June 30, 1907. It is asserted that complainant had expended in Louisiana up to June 30, 1906, $4,711,000.00 in the purchase and construction of exchanges and toll lines which amount was still further increased by June 30, 1907, to $5,394,154.43, and it is upon these totals that the percentage of net income to investment is made up.

The president of the company testified that unless things

changed and it was permitted to charge the rates which had been charged prior to the adoption of these rates which are now in question, it would be unable to continue to pay 7 per cent, and that the company would necessarily retrograde, and that while the company had paid 7 per cent to its stockholders for the past few years, it could not continue so to do if the rates in question were adopted. That it did not, in fact, receive anything like 7 per cent upon its investment in Louisiana, and that the average market for money in that State on good securities, and much more certain than telephone stock, was at least 7 per cent, and that there was no inducement to investors in the State of Louisiana, or in the New Orleans money market, to invest in stock in such a company as that of the complainant, where there was more risk and probably less return than in other investments which could be had in that city and State. This evidence was not, in terms, contradicted, though other contentions are made by the appellants. The differences between the parties as to the rate of the return upon the investment in Louisiana arise from the different data taken by them upon which to calculate the return, and will be referred to later. The single question before us is as to the character of the rates provided in Order No. 552, whether such rates are confiscatory, or, if there is any difference, whether the rates are only unreasonable, unjust and inadequate, although not confiscatory, and therefore not in violation of the Federal Constitution. The question under articles 284 and 285 of the constitution of Louisiana, *supra*, even of the unreasonableness of the rates, may be inquired into by a Federal court, by reason of the diverse citizenship of the parties to this suit, and the complainant is not confined to a state court upon this question. *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 391. The complainant comes into court on both grounds, asserting that the rates are so low as to take its property in violation of the Fourteenth Amendment to the Federal Constitution, and also that the rates are so low as to be unreasonable and unjust under the above cited articles of the constitution of Louisiana.

Like any other case, the onus rests upon this complainant to prove the existence of the fact it alleges, viz., that the rates are so low as to be confiscatory, or at least unreasonable and unjust. The court below held that the rates actually established by the commission were void, because, as was stated by the court, those rates were not established upon investigation into the question of their sufficiency, but by a merely arbitrary conjecture by the commission, not based on investigation or the exercise of judgment and discretion, and the order promulgating the establishment of the rates was, therefore, illegal and void, and hence there was no presumption of the correctness of the rates, such as generally obtains in relation to rates adopted by the legislature or a commission appointed by it. See *Chicago, Milwaukee &c. Ry.* v. *Tompkins*, 176 U. S. 167, 173; *Ex parte Young*, 209 U. S. 123, 165.

We are of opinion that the court below erred in its conclusion that there was no presumption in favor of the validity of the rates promulgated by the Order No. 552. We think the evidence shows that these rates were really not adopted by arbitrary conjecture, nor does it show that they were based on no investigation or without the exercise of judgment or discretion.

It seems there had been complaints as to the tariff of rates under which the complainant was operating before the Order No. 552 was made, and the commission had investigated these complaints so far as to make a careful examination of the returns of complainant made to the commission. These returns showed generally the character and operation of the business of complainant, its income, operating expenses and investments in Louisiana. The commission, after examining them, issued the order to show cause why its rates should not be decreased; the commission on the final hearing on the return of the order to show cause took into consideration both the statement presented by the complainant on the return of that order and also the statements or returns previously filed by the company. The secretary to the commission stated that the items in these returns which had most weight in causing the commission to

reach a conclusion that the rates then charged were unreasonable were the earnings and operating expenses and net earnings, as shown by these reports made to the commission. These reports were annual, and were under oath. It appeared from the evidence of the secretary that he was aware of the fact that the taxing authorities adopted a basis of valuation on telephone property which was not its full market value; that property of this nature, like all other property, was not assessed in Louisiana at its actual value, but for an appreciably less amount, and the valuation as returned to and filed with the commission by the complainant followed the valuation placed upon its property by the taxing authorities, and that the witness therefore knew that the valuation in these reports of the complainant's property in the State of Louisiana was not its real value. He also said that in fixing a schedule of rates the commission did not adopt that valuation as a basis. The witness further stated that the commission, in acting upon the question, was of opinion that the proof showed that the company was making what the commission considered were unreasonable earnings, and that was shown by the annual reports made by it for the years 1904, 1905 and 1906, and the statement filed by the counsel for the company on his return to the order to show cause. No proof was offered to the commission in the presence of any one representing the complainant other than the statement of receipts and disbursements contained in the reports mentioned.

Now it may be true that these returns did not contain all the data upon which a very close and accurate judgment could be based as to the rates that ought to be charged by complainant, under all the circumstances. This is only saying the order may have been erroneous or based upon insufficient evidence, which is no more than saying that upon the investigation the commission may have come to a mistaken conclusion by reason of erroneous inferences from the evidence furnished by complainant's own returns, but that is far from showing that the commission had by a merely arbitrary order promulgated certain rates without making the slightest effort to obtain any

knowledge whatever upon the subject. It did not lose jurisdiction by reason of the mistakes it may have made, and as a result the rates adopted were not merely arbitrary conjectures, but based on reasons which, while they may have been insufficient, cannot be described as resulting in a decision wholly without evidence to support it. The rates, therefore, promulgated must be regarded as *prima facie* fair and valid, or, in other words, the onus was upon the complainant to show that they were, what it asserts, confiscatory or unreasonable. The court below did state in its opinion that the evidence established that the complainant had not then earned under the tariff in Order No. 488 (which existed prior to No. 552, and the rates under which were higher than those under Order No. 552), as much as 7 per cent on its Louisiana business, and it held that a profit of 7 per cent on the Louisiana business would be only a fair return on a business of this character, and therefore any reduction of existing rates would be unreasonable and unjust. If the conclusion of the insufficiency of the prior rates were justified it would probably be an answer to the claim of the commission that the reduced rates provided for in Order No. 552 were sufficient.

There are one or two facts, however, now to be taken into consideration before the correctness of that conclusion can be affirmed. In the course of the trial various questions were argued as to the manner of conducting such a business as this, with regard to extensions, earnings and disbursements, as well as questions of depreciation of plant and how to treat the amount collected therefor, and other questions of that nature. Exactly how the money which resulted from the rates in actual operation was used was not in all cases shown in detail, either from the books or by oral testimony. Something was left in doubt and to conjecture. In the course of the opinion of the Circuit Court the following was said: "It is urged by the commission that included in the Louisiana investment of complainant is a sum earned from Louisiana business, set aside in the reserve fund and then used in extending the system in

Louisiana, and now treated as a part of the Louisiana investment by the stockholders. This may be so to some extent—it is certainly possible. But it is impossible for me to determine, from the figures in the record, to what extent, if at all, it is a fact. Counsel for defendant have not themselves undertaken to indicate what, even in round figures, they consider is the sum thus earned in the business and reinvested in the business, without having been distributed to the shareholders in dividends. It will be time to consider the legal results from such a state of facts when it shall have been shown to exist in a definite sum and not in a purely conjectural amount." And again: "Counsel for the commission argued that the complainant's property in Louisiana was not all paid for with complainant's capital, but was partly paid for out of a surplus or reserve, or depreciation fund, which was accumulated by complainant from the receipts of its Louisiana business, and was then reinvested, not in repairs and maintenance, but in extensions and additions to the property. This may be a fact, but it is not shown to be a fact. The commission has power, if it wishes to do so, to direct the books of complainant to be so kept as to show such use of receipts. In the present state of the books this seems to be impossible. And the floating debt of the complainant would seem to be much greater than any sum which could possibly have been used from the reserve, or surplus, or depreciation fund for extensions and additions, after paying for maintenance and repairs."

If the onus rested upon the commission to show these facts it is evident that the obligation has not been fulfilled, but it is just here that the difficulty lies. It was obligatory upon the complainant to show that no part of the money raised to pay for depreciation was added to capital, upon which a return was to be made to stockholders in the way of dividends for the future. It cannot be left to conjecture, but the burden rests with the complainant to show it. It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was

operating, and so to use it, or any part of it, as to permit the company to add it to its capital account, upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of the property, and, having collected it, to use it in another way, upon which the complainant would obtain a return and distribute it to its stockholders. That it was right to raise more money to pay for depreciation than was actually disbursed for the particular year there can be no doubt, for a reserve is necessary in any business of this kind, and so it might accumulate, but to raise more than money enough for the purpose and place the balance to the credit of capital upon which to pay dividends cannot be proper treatment. The court below said it was impossible to find out from the books how much of this had been done, and it treated the fact as one to be explained by the commission and not by the complainant. In other words, while this fact was a material one the onus was placed upon the commission, and not the complainant, to show it. We think, on the contrary, that the obligation was upon the complainant. Now, although the books, it is said, do not show how much money collected for depreciation has been, in fact, used to increase the capital of the complainant upon which dividends were paid to stockholders, yet still, even if the books do not show accurately, or even at all, what disposition was made of these moneys, at any rate the officers of the complainant must be able to make up some reasonable approximation of the amount, even if it be impossible to state it with entire accuracy, and this duty rests with the complainant, in order that it may discharge the duty devolving upon it to prove that the rates were not unreasonably high under Order No. 488, or, in other words, that they were unreasonably low under Order No. 552. It may be that the sum, if any, thus used was not enough to affect the claim that the rates under discussion were unreasonably low. The evidence is insufficient to show clearly that which complainant is under obligations to show. *Knoxville* v. *Water Co.*, 212 U. S. 1; *Willcox* v. *Consolidated Gas Co. of New York*, 212 U. S. 19. We

are not considering a case where there are surplus earnings after providing for a depreciation fund, and the surplus is invested in extensions and additions. We can deal with such a case when it arises.

The evidence in this case applied generally to the actual operation of complainant's business under rates in existence prior to those contained in Order No. 552, and higher than those contained in that order, and the evidence, as contended, showed that even under those rates the profits were not unreasonably high. It is not such a case, therefore, as looks only to the possible effects of the future enforcement of the rates claimed to be too low. If higher rates have been in operation, and the result has shown that they were only reasonable and fair rates, it would in such a business as this follow, with considerable certainty, that with lower rates the profits would be decreased and become unreasonably low. We say this because the evidence shows that in the case of telephone companies the general result of a reduction of rates in some other kinds of business does not always follow, namely, that there would be an increased demand, which could be supplied at a proportionately less cost than the original business. Such, it is admitted, would be the case generally in regard to water companies, gas companies, railroad companies, and perhaps some others, where the rate is a reasonable one. For example, it is said that it would cost no more, or certainly scarcely an appreciable amount more, to haul a train of two cars both filled than it would to haul the same train with both cars half filled, and if the reduction in rates should result in filling the cars where previously they had not been half filled, there might be an increased carriage at a cost very little more than before, and probably an increased profit. So, in the case of a water company, the reduced rate might result in furnishing more water to consumers already existing, and the increased cost of furnishing the same would be infinitesimal, where there was a supply sufficiently large to fill the demand. So, also, in furnishing gas at reduced rates, the reduction in the rate would very probably result in increased

consumption, not only in increased demands from more consumers, but also an increased consumption by consumers already existing, and the increased cost of furnishing the gas would be nothing like in proportion to the increase in consumption. In these cases increased profits might be the result of decreased rates. But with telephone companies, as shown by the testimony of the president of the complainant, the reduction in toll rates does not bring an increased demand, except upon the condition of corresponding increase in expenses. As an illustration the witness took a telegraph company which, as he said, "employs one wire and can send several messages at the same time over that one wire; it employs its own operators to send the message, who consult each other's time and convenience in the handling of it, while the telephone company has to employ two wires, the sender of the message is his own operator, and the telephone operator simply fashions up the facilities for him, and the customer sends his own message, and becomes, therefore, his own operator, hence his convenience and time must be consulted; we have to be ready, in other words, with the operators and the appliances to suit the convenience of the customer, whereas in the telegraph business it is just the other way; the customer brings in his message, and when it suits the convenience of the company to employ its operators and its apparatus to send it, they send the message." The witness then gave further illustration in proof of his contention that the reduction of rates in the telephone business does not increase the business without corresponding increase in the expense.

We do not think this case is one where the bill should be dismissed, even without prejudice, for the reasons that we have stated, that the inquiry has been founded upon the actual effect of rates higher than those permitted under Order No. 552, and therefore that it is not merely conjecture as to what the result of such lower rates would be, the tendency of the evidence being to the effect that the higher rates are still reasonable, and that the lower rates would be unreasonably low. But the burden, as

we have said, rests with the complainant to prove its case, and it has not performed its obligation when this fact as to the disposition of the so-called depreciation fund is left so wholly in doubt. What is the amount reserved for payments for depreciation? What, if any of it, has been carried into capital? How much of the floating debt would carry interest which might be charged as against the amount of the depreciation fund actually used for extensions and additions and charged to capital? All these are questions not answered by the evidence in the case, and which should be made as clear as possible before an attempt ought to be made to answer the question as to rates. The whole case should, therefore, be opened, so that both sides can, on a new trial, bring out all the material facts upon which a decision can finally be based.

We, therefore, reverse the decree and direct a new trial.

Reversed.

MR. JUSTICE WHITE, not having heard the argument, did not take part in the decision of the case.